

09:11AM

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff)	
)	
vs)	18-CR-97
)	
ROSS ROGGIO,)	
)	
Defendant)	
_____)	

TRANSCRIPT OF PROCEEDINGS
Suppression Hearing
BEFORE THE HONORABLE ROBERT D. MARIANI
THURSDAY, MAY 27, 2021; 9:30 A.M.
SCRANTON, PENNSYLVANIA

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Proceedings recorded by machine shorthand, transcript produced
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I N D E X

Witnesses:	Direct	Cross	Redirect	Recross
For the Government:				
Aurelia Morales	3	21	54	58
James Mundy	61	67	--	--
Jeff Burke	75	107	160	161
For the Defendant:				
Felney Augustine	162	--	--	--
Douglas Vetrano	167	--	--	--

E X H I B I T I N D E X

For the Government:	Identified	Admitted
Exhibit No. 1	9, 22	10
Exhibit No. 2	66, 67	66
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Exhibit Nos. 3&4	83	84
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Exhibit No. 12	102, 157	107
For the Defendant:		
Exhibits D, E & F	73, 141	--

09:38AM 1 THE COURT: Good morning, everyone.

09:38AM 2 MR. HINKLEY: Good morning, Your Honor.

09:38AM 3 MR. BARTOLAI: Good morning, Judge.

09:39AM 4 THE COURT: This is the matter of United States v. Ross
09:39AM 5 Roggio. We are here on two motions filed by Mr. Roggio. The
09:39AM 6 first is a Motion to Suppress Mr. Roggio's statement and
09:39AM 7 related evidence, which is document 64, and in addition to
09:39AM 8 that, there is document 46, a Motion to Suppress evidence
09:39AM 9 seized in violation of the United States Constitution. Both of
09:39AM 10 those motions will be heard today.

09:39AM 11 Mr. Hinkley, are you ready to proceed?

09:39AM 12 MR. HINKLEY: We are, Your Honor.

09:39AM 13 THE COURT: You can call your first witness.

09:39AM 14 MR. HINKLEY: We call Aurelia Morales, Your Honor.

09:39AM 15 A U R E L I A M O R A L E S IS CALLED, AND HAVING BEEN
09:39AM 16 DULY SWORN, TESTIFIED AS FOLLOWS:

09:40AM 17 THE CLERK: Please state and spell your name for the record.

09:40AM 18 THE WITNESS: Aurelia Morales, A-U-R-E-L-I-A, M-O-R-A-L-E-S.

09:41AM 19 THE CLERK: Thank you. You may be seated.

09:41AM 20 THE COURT: You can proceed.

09:41AM 21 MR. HINKLEY: Thank you, Your Honor.

09:41AM 22 DIRECT EXAMINATION

09:41AM 23 BY MR. HINKLEY:

09:41AM 24 Q. Ms. Morales, how are you employed?

09:41AM 25 A. As a U.S. Customs and Border Protection Officer.

09:41AM 1 Q. How long have you been with the Customs Border
09:41AM 2 Enforcement?

09:41AM 3 A. For 13 years.

09:41AM 4 Q. Can you give the Court a little background in regards to
09:41AM 5 your education? What type of education have you had?

09:41AM 6 A. I graduated John Jay College of Criminal Justice in 2007
09:41AM 7 with two degrees, an Associate in Criminal Justice and
09:41AM 8 Bachelor's in International Criminal Justice. And I started my
09:41AM 9 Master's in International Relations at N.Y.U., but I didn't
09:41AM 10 graduate yet.

09:41AM 11 Q. I see. You've indicated that you're with U.S. Customs and
09:41AM 12 Border Protection for 13 years. What type of position do you
09:42AM 13 hold today with that agency?

09:42AM 14 A. I'm an officer, and I have a lot of experience in
09:42AM 15 processing people and doing different inspections with U.S.
09:42AM 16 Customs and Border Protection through different teams and
09:42AM 17 different assignments.

09:42AM 18 Q. Would you move the microphone a little bit closer to your
09:42AM 19 mouth, I'm having a little bit of difficulty understanding you.

09:42AM 20 What type of training have you received from Customs and
09:42AM 21 Border Protection, in regards to your position there?

09:42AM 22 A. I'm sorry, I couldn't hear the first part of the question.

09:42AM 23 Q. What kind of training have you received from the agency,
09:42AM 24 in regards to your position there?

09:42AM 25 A. The training with the CBP, which is Customs and Border

09:42AM 1 Protection, stems from Immigration Law, Customs Law,
09:43AM 2 counterterrorism measures, assessing terror threats, assessing
09:43AM 3 criminality, and so on.

09:43AM 4 Q. Okay. As part of your duties, are you someone who will do
09:43AM 5 what they call secondary inspections or secondary interviews at
09:43AM 6 borders? Is that part of your duties?

09:43AM 7 A. Could you repeat the question?

09:43AM 8 Q. Sure. As part of your duties, do you do with what's
09:43AM 9 commonly called a secondary inspection or a secondary interview
09:43AM 10 at borders?

09:43AM 11 A. Yes.

09:43AM 12 Q. Can you describe to the Judge, basically, what that means,
09:43AM 13 what that is?

09:43AM 14 A. Secondary inspection is when a person that was processed
09:43AM 15 through primary inspection needs additional assessing, in terms
09:44AM 16 of Immigration Laws, Customs Laws or any threats, any
09:44AM 17 criminality involved with that person.

09:44AM 18 Q. Can you give the Court an idea of how many, if you know,
09:44AM 19 secondary inspections you've been involved with, during your
09:44AM 20 career?

09:44AM 21 A. That's hard to assess. Probably -- I know only when I was
09:44AM 22 on the specialized team, I conducted, at least, 5,000
09:44AM 23 interviews in three years, but I want to say, throughout my
09:44AM 24 entire career, maybe, over 10,000.

09:44AM 25 Q. So this is not an infrequent thing that's done by you or

09:44AM 1 your agency; is that correct?

09:44AM 2 A. Not at all.

09:44AM 3 Q. During February of 2017, were you employed by Customs and
09:45AM 4 Border Protection?

09:45AM 5 A. Yes.

09:45AM 6 Q. On February 26 of 2017, where were you stationed?

09:45AM 7 A. At John F. Kennedy International Airport in New York City.

09:45AM 8 Q. Likewise, on that day, were you working in your capacity
09:45AM 9 to do secondary inspections at the airport?

09:45AM 10 A. Correct. That day, I was actually on a specialized team
09:45AM 11 called TTRT Tactical Terrorism Response Team.

09:45AM 12 Q. Could you give the Judge a little bit of background, in
09:45AM 13 regards to that particular team? What was that team all about?

09:45AM 14 A. Okay. Historically, in 2015, TTRT was initiated by the
09:46AM 15 Government and United States Customs and Border Protection as a
09:46AM 16 response to fight against the terrorist group ISIS, the Islamic
09:46AM 17 State of Iraq and Al sham, Syria.

09:46AM 18 So we were instructed to interview passengers that arrived
09:46AM 19 from, primarily, Iraq, Syria and conflict zones and the
09:46AM 20 countries around, in order to get more information on the fight
09:46AM 21 on the ground, stemming from, maybe, reporting criminality to
09:46AM 22 intelligence information, in terms of where the battle was
09:46AM 23 situated or where the conflict was taking place, including
09:47AM 24 names of people involved or possibly involved or if they have
09:47AM 25 personal experience with any conflict coming from those places,

09:47AM 1 in the hopes that we would get more information.

09:47AM 2 At that time, the terrorist network was going under the
09:47AM 3 black internet, the dark internet, meaning, that Government
09:47AM 4 agents in the area could not get more information from their
09:47AM 5 sources on the ground, via following internet analysis, so our
09:47AM 6 team was created to get more information from people coming
09:47AM 7 from those places, basically. I hope that answers the question.

09:47AM 8 Q. So on February 26, 2017, you were working at J.F.K.

09:48AM 9 Airport. Was it -- on that particular day, were your duties,
09:48AM 10 basically, to do secondary interviews of Travelers who were
09:48AM 11 coming in from foreign places?

09:48AM 12 A. Yes.

09:48AM 13 Q. And why don't you just describe to the Court, if you
09:48AM 14 would, what that means? How that would work? In other words,
09:48AM 15 someone comes, is going to be secondary, what happens?

09:48AM 16 A. So the primary officer will process the passenger, and if
09:48AM 17 the passenger will need additional screening or assessing, the
09:48AM 18 passenger will get referred into secondary. In secondary, the
09:48AM 19 passenger will have to wait for an officer that is specialized
09:48AM 20 in the issue that the passenger is bringing and along with
09:48AM 21 other passengers in the room.

09:49AM 22 Sometimes there's a wait, because J.F.K. is very busy all
09:49AM 23 the time with all different cases, but on that particular day,
09:49AM 24 I was instructed to interview him. I don't remember exactly
09:49AM 25 when I got there, I knew I had interviews before and after him

09:49AM 1 and, probably, different places, as well.

09:49AM 2 Q. Okay, I'll get into the interview with Mr. Roggio in a
09:49AM 3 moment, I'm just trying to set the stage for the Judge so he
09:49AM 4 can understand how your job works.

09:49AM 5 Typical day on February 26 of 2017, you show up to work,
09:49AM 6 and you were assigned to do interviews, secondary interviews of
09:49AM 7 folks; is that right?

09:49AM 8 A. Yes.

09:49AM 9 Q. And let me ask you, you indicated that there were
09:49AM 10 interviews before and after Mr. Roggio. During the time, let's
09:49AM 11 say, the eight-hour shift or whatever, approximately, how many
09:49AM 12 interviews would you do, in your approximation?

09:49AM 13 A. Approximation, it could be 2 to 3 to 25 to 30 a day. And
09:50AM 14 it could be up to five different locations, buildings, where I
09:50AM 15 have to drive and meet the passenger.

09:50AM 16 Q. And, more specifically, I want to get into, you've
09:50AM 17 indicated that when someone is going to be secondary, they are,
09:50AM 18 let's say, recommended to you or one of your colleagues, they
09:50AM 19 come to a room, and then they wait to be interviewed.

09:50AM 20 Could you describe what an interview room would look like
09:50AM 21 at J.F.K. where you actually would do an interview? Physically,
09:50AM 22 what is it? How is it set up?

09:50AM 23 A. It could vary, depending on the location. But in his
09:50AM 24 particular case, I remember the terminal, it was Terminal 1, so
09:50AM 25 everything was a configuration, at that point, being so busy,

09:51AM 1 it was pretty much wherever we can conduct an interview. But
09:51AM 2 for that day, I remember I had a room that was, like, maybe, 10
09:51AM 3 x 12, and maybe a desk, a chair, and that's about it.

09:51AM 4 Q. So, specifically, I'd like to ask you a few questions, in
09:51AM 5 regards to your secondary interview of Mr. Roggio.

09:51AM 6 Before I do that, I've left on the table up there a number
09:51AM 7 of exhibits, on the top is Government Exhibit No. 1 for
09:51AM 8 identification purposes.

09:51AM 9 A. May I put my glasses on?

09:51AM 10 Q. Sure.

09:52AM 11 A. Yes.

09:52AM 12 Q. Would you take a look at that document, and if you would
09:52AM 13 identify it for the Court, what is Government's Exhibit No. 1?

09:52AM 14 A. This is a report of Mr. Roggio arriving at J.F.K., and I'm
09:52AM 15 assuming it's a TECS record with -- yeah, it's a TECS record,
09:52AM 16 it's an automatic record generated by the system through Mr.
09:52AM 17 Roggio's processing.

09:52AM 18 Q. Okay. Would the information that's in this document, would
09:52AM 19 that have been keyed in by yourself as the interviewer of Mr.
09:52AM 20 Roggio?

09:52AM 21 A. This is done automatically by the system.

09:53AM 22 Q. Second page of Government's Exhibit 1.

09:53AM 23 A. Yes.

09:53AM 24 Q. Would you describe what that is?

09:53AM 25 A. This is my report, my interview that I conducted with Mr.

09:53AM 1 Roggio, my close-out.

09:53AM 2 Q. So would this report be something you prepared at or close
09:53AM 3 to the time of Mr. Roggio's interview?

09:53AM 4 A. Correct, afterwards.

09:53AM 5 Q. Obviously, prior to today's testimony, you had an
09:53AM 6 opportunity to read over that report?

09:53AM 7 A. Yes.

09:53AM 8 Q. Does it accurately reflect the interview that you gave Mr.
09:53AM 9 Roggio on February 26 of 2017?

09:53AM 10 A. 100 percent.

09:53AM 11 MR. HINKLEY: Your Honor, the Government is going to move
09:53AM 12 for admission of Government's Exhibit No. 1.

09:53AM 13 MR. BARTOLAI: We have no objection, Judge. In fact, we had
09:53AM 14 submitted this, I believe, as Exhibit B to one of our previous
09:54AM 15 filings. Our copy was redacted, of course.

09:54AM 16 THE COURT: Very well. Government's 1 is admitted.

09:54AM 17 (At this time Government's Exhibit No. 1 was admitted into
09:54AM 18 evidence.)

09:54AM 19 BY MR. HINKLEY:

09:54AM 20 Q. Ms. Morales, would it aid your testimony today if you had
09:54AM 21 Government's Exhibit 1, specifically, the report available to
09:54AM 22 make reference, as you're testifying as to the interview of Mr.
09:54AM 23 Roggio? Would that assist you today?

09:54AM 24 A. Yes.

09:54AM 25 Q. So let me ask, more particularly, in regards to Mr.

09:54AM 1 Roggio, he was referred to you for a secondary inspection; is
09:54AM 2 that right?

09:54AM 3 A. Yes.

09:54AM 4 Q. Do you recall the name of the officer who referred him to
09:54AM 5 you?

09:54AM 6 A. No.

09:54AM 7 Q. If you look at Government's Exhibit No. 1, would that help
09:54AM 8 your recollection in regards to that, on the first page?

09:55AM 9 A. Augustine, Felney.

09:55AM 10 Q. So Officer Augustine is the one who, according to the
09:55AM 11 paperwork, referred Mr. Roggio to secondary; is that correct?

09:55AM 12 A. Yes.

09:55AM 13 Q. And does the paperwork indicate the time of the referral?

09:55AM 14 A. Yes.

09:55AM 15 Q. And what time would that be?

09:55AM 16 A. 1928 Eastern time.

09:55AM 17 Q. As Mr. Roggio was referred to you, was his referral any
09:55AM 18 different from any other referrals that you received that day,
09:55AM 19 meaning, did anyone speak to you, before he was referred to
09:55AM 20 you, in regards to what he was being referred for, for what
09:56AM 21 reason?

09:56AM 22 A. No.

09:56AM 23 Q. Okay. So I want you to describe how it happened, from your
09:56AM 24 perspective, as a referring officer or the person for whom that
09:56AM 25 was referred to?

09:56AM 1 A. So it's four years ago, as much as I remember, I called
09:56AM 2 Mr. Roggio from the secondary holding area and I directed him
09:56AM 3 to the office where I conducted an interview.

09:56AM 4 Q. So would this be the same as any other secondary?

09:56AM 5 A. Yes, every time.

09:56AM 6 Q. I think you indicated earlier that you would have had
09:56AM 7 other interviews prior to Mr. Roggio and interviews after Mr.
09:56AM 8 Roggio?

09:56AM 9 A. Yes.

09:56AM 10 Q. Do you know -- can you tell, from your report, what time
09:56AM 11 it is that you actually called Mr. Roggio to the room to be
09:56AM 12 interviewed? And if you can't, that's fine.

09:57AM 13 A. No, I can't.

09:57AM 14 MR. BARTOLAI: What was the question again? I'm sorry. What
09:57AM 15 was the question Todd?

09:57AM 16 MR. HINKLEY: The question was whether or not she could
09:57AM 17 recall when, exactly, she called Mr. Roggio to the interview
09:57AM 18 room.

09:57AM 19 MR. BARTOLAI: The time, okay. Judge, if I may, I didn't
09:57AM 20 ask previously, but if there are any witnesses present in the
09:57AM 21 courtroom, I would ask that they be sequestered. That would
09:57AM 22 exclude, of course, the case agent.

09:57AM 23 MR. HINKLEY: Only the case agent, Your Honor, and I would
09:57AM 24 join in that if you have any witnesses.

09:57AM 25 MR. BARTOLAI: No, I don't.

09:57AM 1 THE COURT: Very well.

09:57AM 2 BY MR. HINKLEY:

09:57AM 3 Q. So Ms. Morales, why don't you describe for the Court your
09:57AM 4 interview of Mr. Roggio, and I'll just ask you to give a
09:57AM 5 narrative, from your recollection, of how the interview went
09:57AM 6 and what questions you asked and Mr. Roggio's replies?

09:57AM 7 A. So because I interviewed so many people around that time
09:58AM 8 and it has been four years already, I could only remember him
09:58AM 9 based on my notes.

09:58AM 10 Q. Okay.

09:58AM 11 A. So when I read my notes, I remember an interview
09:58AM 12 being -- he was very pleasant, very cooperative, very forward,
09:58AM 13 I remember he was giving me, actually, more information that I
09:58AM 14 didn't request at that point, but I just allowed him to speak,
09:58AM 15 in the hopes that he will tell me more information, the kind of
09:58AM 16 derogatory information I was expecting coming from Iraq and,
09:58AM 17 also, based on his story that he told me that happened to him.

09:58AM 18 But for the most part, I thought he was a nice gentleman,
09:58AM 19 he was trying to answer my questions correctly, and I didn't
09:58AM 20 have anything to complain about him. I also put at the end that
09:58AM 21 he was cooperative, meaning, that he didn't complain about the
09:58AM 22 questions.

09:59AM 23 Usually, when a passenger complains, I put in my report
09:59AM 24 that they complain or they thought it was too invasive or too
09:59AM 25 intrusive or they asked for a supervisor, any of that stuff.

09:59AM 1 Q. And none of that happened here?

09:59AM 2 A. No. So I put he was cooperative, so I remember him being
09:59AM 3 very pleasant and very forward with his answers.

09:59AM 4 Q. So, more particularly, how did you kick off the interview,
09:59AM 5 what questions did you ask, if you can recall?

09:59AM 6 A. So basic questions that I ask every passenger traveling
09:59AM 7 from international travel. So the five W's. Who, where, when,
09:59AM 8 how -- who, where, when and the other ones -- the instances,
09:59AM 9 the events that occurred during the passenger's travel, from
10:00AM 10 when they left the United States until they came back to the
10:00AM 11 United States.

10:00AM 12 Q. And would those type of questions include where the person
10:00AM 13 went?

10:00AM 14 A. Correct.

10:00AM 15 Q. And what the person was doing?

10:00AM 16 A. Correct.

10:00AM 17 Q. Would you and did you ask Mr. Roggio those questions?

10:00AM 18 A. Yes.

10:00AM 19 Q. Did you ask him what type of business he was involved
10:00AM 20 with?

10:00AM 21 A. Yes.

10:00AM 22 Q. In regards to the question of what business he was
10:00AM 23 involved with, is that a question that you generally or
10:00AM 24 routinely ask international travelers?

10:00AM 25 A. Yes.

10:00AM 1 Q. So do you recall the answers Mr. Roggio gave you, in
10:00AM 2 regards to these questions? I'm just asking you to give a
10:00AM 3 narrative for the Court what Mr. Roggio told you?

10:00AM 4 A. So, for the most part, he was a construction company owner
10:01AM 5 with workers in Iraq, they were building infrastructure
10:01AM 6 buildings business, and he was part owner with somebody from
10:01AM 7 over there.

10:01AM 8 Q. Did he give you the actual address that he indicated was
10:01AM 9 his business address in Iraq?

10:01AM 10 A. I believe so, yes.

10:01AM 11 Q. That's reflected in your report, is that correct?

10:01AM 12 A. Yes, yes.

10:01AM 13 Q. And I assume you asked him the nature of his business,
10:01AM 14 what he was doing?

10:01AM 15 A. Yes.

10:01AM 16 Q. And he provided to you information in regards to that, is
10:01AM 17 that correct?

10:01AM 18 A. Yes.

10:01AM 19 Q. And as I read your report, you indicated that he owned
10:01AM 20 something called Roggio Consulting Company?

10:02AM 21 A. Yes.

10:02AM 22 Q. That he was involved in overseeing construction of
10:02AM 23 high-rise residential buildings in Iraq?

10:02AM 24 A. Yes.

10:02AM 25 Q. Now, did Mr. Roggio indicate to you that there was some

10:02AM 1 type of issue that occurred in his business relationships in
10:02AM 2 Iraq?

10:02AM 3 A. I don't remember, I don't remember if he told me of any
10:02AM 4 issues with the business --

10:02AM 5 Q. Okay.

10:02AM 6 A. -- from the beginning of the interview.

10:02AM 7 Q. So I notice in your report of interview with Mr. Roggio,
10:03AM 8 he had indicated that he was paid \$9 million by his Iraqi
10:03AM 9 counterparts, but there was some dispute in regards to how much
10:03AM 10 money he received?

10:03AM 11 A. Yes.

10:03AM 12 Q. According to your report, Mr. Roggio indicated to you that
10:03AM 13 he was told that he had to pay money back to his investors
10:03AM 14 there or business associates, and that he was kidnapped by
10:03AM 15 them--

10:03AM 16 A. Yes.

10:03AM 17 Q. -- until he paid that back.

10:03AM 18 A. Yes.

10:03AM 19 Q. Again, is this the recollection of the statements you
10:04AM 20 received from Mr. Roggio, at the time of the interview?

10:04AM 21 A. Correct. I remember this information, however, I think it
10:04AM 22 started with him traveling on the temporary passport, and I
10:04AM 23 asked him what happened to the real passport, and that's how he
10:04AM 24 got into the him being kidnapped and whoever kidnapped him took
10:04AM 25 his real passport.

10:04AM 1 Q. I see.

10:04AM 2 A. And then I think we got into the problems with the
10:04AM 3 business and all of that stuff.

10:04AM 4 Q. Okay, so I was getting in front of myself a little bit
10:04AM 5 when I was asking about the issues. So you indicated he was
10:04AM 6 traveling on a temporary passport?

10:04AM 7 A. Yes. I think I put it in my report at the beginning,
10:04AM 8 Temporary United States passport, and a copy of his stolen
10:04AM 9 United States passport.

10:04AM 10 Q. Okay. Someone who is traveling on a temporary passport, is
10:05AM 11 that, alone, an issue that you would explore?

10:05AM 12 A. Definitely.

10:05AM 13 Q. With anybody?

10:05AM 14 A. Definitely, 100 percent.

10:05AM 15 Q. And you did so here?

10:05AM 16 A. Yes.

10:05AM 17 Q. And is that when Mr. Roggio then gave the explanation of
10:05AM 18 how he lost his passport and why he was on a temporary
10:05AM 19 passport?

10:05AM 20 A. Correct, especially, losing it in Iraq, and anybody could
10:05AM 21 have, like, used his real passport to gain entry to the U.S.,
10:05AM 22 and that would have been a big issue for us.

10:05AM 23 Q. After he gave you the information, in regards to the
10:05AM 24 kidnapping, what other information did you elicit from him, at
10:05AM 25 that point, if you recall?

10:05AM 1 A. I was trying to get as much information -- I remember him
10:06AM 2 just telling me the story, and I don't remember asking too many
10:06AM 3 questions because I wanted him to see -- I mean, to have his
10:06AM 4 chance to tell me what happened to him, especially, assuming
10:06AM 5 that he got kidnapped, and I wanted to see if, maybe, there was
10:06AM 6 more people involved, maybe, there was more people kidnapped
10:06AM 7 with him at the same time.

10:06AM 8 So I don't remember asking too many questions, I wanted
10:06AM 9 him to just tell me what he remembered, and pretty much whoever
10:06AM 10 was implicated, and if he can remember any, like, names or
10:06AM 11 places that he was taken or any of that stuff.

10:06AM 12 Q. And so my question to you is, was Mr. Roggio fairly open
10:06AM 13 with this?

10:06AM 14 A. Yes.

10:06AM 15 Q. And you recorded the information in your notes?

10:06AM 16 A. Yes.

10:06AM 17 Q. And that information is in this report that you've
10:06AM 18 prepared?

10:06AM 19 A. Yes.

10:07AM 20 Q. Did Mr. Roggio, to your recollection, have a conversation
10:07AM 21 with you, in regards to why he was traveling back to the United
10:07AM 22 States, specifically, about his father, his father's health?

10:07AM 23 A. Yes.

10:07AM 24 Q. What was that about?

10:07AM 25 A. He said that his father was in the hospital, and he wants

10:07AM 1 to come and see him, make sure he's okay.

10:07AM 2 Q. Okay. Did Mr. Roggio indicate that's where he was headed,
10:07AM 3 to see his father?

10:07AM 4 A. Yes.

10:07AM 5 Q. At the conclusion of your interview with Mr. Roggio, did
10:07AM 6 you have any type of conversation, in regards to electronic
10:07AM 7 devices that he had with him while traveling?

10:07AM 8 A. I don't remember.

10:08AM 9 Q. So let me ask you this. How long, to your recollection,
10:08AM 10 did this interview take, from the time that you brought Mr.
10:08AM 11 Roggio back to the interview room until you were completed with
10:08AM 12 your secondary interview of him?

10:08AM 13 A. I want to say 15 to 20 minutes.

10:08AM 14 Q. Once you were done with your interview, what happened with
10:08AM 15 Mr. Roggio?

10:08AM 16 A. He left.

10:08AM 17 Q. Okay. Were you part or present when -- well, let me ask
10:08AM 18 you this. I'll withdraw that question.

10:08AM 19 The day of this particular interview, were there other
10:08AM 20 agents who were present during the interview or at the time of
10:08AM 21 Mr. Roggio's secondary inspection?

10:08AM 22 A. Yes.

10:09AM 23 Q. Do you recall those folks' names?

10:09AM 24 A. So based on my statement, Special Agent Vetrano and Agent
10:09AM 25 Cy Mundy and other CBP officers at that time.

10:09AM 1 Q. Now, did either of those officers or agents coach you, in
10:09AM 2 regards to what type of questions to ask Mr. Roggio?

10:09AM 3 A. I don't remember.

10:09AM 4 Q. At the conclusion of your interview with Mr. Roggio, did
10:09AM 5 those agents have interaction with Mr. Roggio, in regards to
10:09AM 6 the electronics Mr. Roggio was keeping?

10:09AM 7 A. I don't remember.

10:09AM 8 Q. So when you're done with your interview, what happened,
10:09AM 9 basically?

10:09AM 10 A. I went to the next interview.

10:09AM 11 Q. Okay. And any of the questions that you asked Mr. Roggio,
10:10AM 12 would they be different or unique as to any question you would
10:10AM 13 ask any person that was traveling internationally at that point
10:10AM 14 or is it just your routine questions that you asked him?

10:10AM 15 A. They were routine questions, up to the point where he said
10:10AM 16 he was kidnapped, and a couple of -- I had a couple experiences
10:10AM 17 with people being kidnapped, so, then, I probably asked more
10:10AM 18 questions, in terms of, like, names, if he heard any names
10:10AM 19 while he was taken or locations or if he remembers specifics
10:10AM 20 about the kidnapping itself.

10:10AM 21 Q. So is it your testimony that any questions that you would
10:10AM 22 have posed to Mr. Roggio would have been prompted by whatever
10:11AM 23 information he was providing you, is that correct?

10:11AM 24 A. Correct.

10:11AM 25 Q. During your interview of Mr. Roggio, do you recall him

10:11AM 1 asking whether or not he should have an attorney present?

10:11AM 2 A. I don't remember if he asked that.

10:11AM 3 Q. If he had asked that question, would that appear in your
10:11AM 4 report, as part of your narrative that you took down?

10:11AM 5 A. I believe so.

10:11AM 6 MR. BARTOLAI: I'm sorry, what was that question, Todd?

10:11AM 7 MR. HINKLEY: I asked the witness whether, had Mr. Roggio
10:11AM 8 inquired about having an attorney, would that have appeared in
10:11AM 9 her narrative report, in regards to her interview of Mr.

10:12AM 10 Roggio?

10:12AM 11 MR. BARTOLAI: Okay.

10:12AM 12 MR. HINKLEY: No further questions, Your Honor.

10:12AM 13 THE COURT: Cross-examine.

10:12AM 14 MR. BARTOLAI: May I have a moment, Judge?

10:12AM 15 THE COURT: All right.

10:12AM 16 CROSS EXAMINATION

10:12AM 17 BY MR. BARTOLAI:

10:12AM 18 Q. Good morning, ma'am. It's Ms. Morales; right?

10:12AM 19 A. Yes.

10:12AM 20 Q. My name is Gino Bartolai, I represent Ross Roggio in this
10:13AM 21 case. So I have some questions. I'm going to start with just
10:13AM 22 some of your background.

10:13AM 23 You've been with CBP, Customs Border Protection for 13
10:13AM 24 years?

10:13AM 25 A. Correct.

10:13AM 1 Q. All right. Can you hear me okay?

10:13AM 2 A. Yes.

10:13AM 3 Q. And I believe, now, you're an officer, you said?

10:13AM 4 A. Yes.

10:13AM 5 Q. What does that mean? What is an officer? How is that,

10:13AM 6 like, in the hierarchy versus, like, whatever you were the day

10:13AM 7 of this interview with Mr. Roggio?

10:13AM 8 A. Okay, so as an officer, you process people who arrive from

10:13AM 9 international travel.

10:13AM 10 Q. So were you an officer, then, at the time?

10:13AM 11 A. I was an intelligence officer, correct.

10:13AM 12 Q. Okay. That would have been on February 26, 2017?

10:13AM 13 A. Yes.

10:13AM 14 Q. So on that date, you were an intelligence officer with the

10:13AM 15 CBP, which is the Customs Border Patrol Agency?

10:14AM 16 A. Correct -- Protection.

10:14AM 17 Q. Okay. On that particular day, you were with, I guess it

10:14AM 18 was, the TTR Tactical Terrorism Response Team.

10:14AM 19 A. Yes.

10:14AM 20 Q. Now, in front of you, the Government has shown you an

10:14AM 21 exhibit, it's part of your report and it's Exhibit No. 1. You

10:14AM 22 have that there; correct?

10:14AM 23 A. Yes.

10:14AM 24 Q. If we look at the first page of that towards the bottom,

10:14AM 25 Referring officer code, TTR, Tactical Terrorism Response Team.

10:14AM 1 Is that -- can you explain why that block contains that
10:14AM 2 information?

10:14AM 3 A. Because I was the officer on the Tactical Terrorism
10:14AM 4 Response Team who closed out the referral.

10:14AM 5 Q. Okay. In other words, there's no -- that doesn't indicate,
10:14AM 6 in any way, that Mr. Roggio was suspected of terrorism or
10:14AM 7 anything like that, does it?

10:15AM 8 A. No. That's just my identification for closing the report.

10:15AM 9 Q. Okay. And I notice on the very top -- now, this report,
10:15AM 10 the one I have, Government's Exhibit 1, it says -- at the very
10:15AM 11 top -- generated by Jeffrey Burke. Does your report say the
10:15AM 12 same thing?

10:15AM 13 A. Yes.

10:15AM 14 Q. Okay. The contents of this report, the data that's in this
10:15AM 15 report is your data, is your information that you put in there;
10:15AM 16 right?

10:15AM 17 A. Yes.

10:15AM 18 Q. And he, apparently, is the one who printed the report out;
10:15AM 19 is that a fair statement?

10:15AM 20 A. Yes.

10:15AM 21 Q. Okay. And we could see up to the left of where it says
10:15AM 22 Jeffrey Burke, 2/27/17 would be the date, and that date we
10:15AM 23 talked about there is the date that the report was printed;
10:15AM 24 correct?

10:15AM 25 A. Yes.

10:15AM 1 Q. Okay. And this secondary inspection or interview that you
10:15AM 2 conducted with Mr. Roggio would have been on February 26, 2017;
10:15AM 3 right?

10:15AM 4 A. Correct.

10:15AM 5 Q. And I see on Government Exhibit 1, the very first page,
10:16AM 6 the very first block, it says, Referred by, and it says
10:16AM 7 Augustine, Felney. Was that the primary contact?

10:16AM 8 A. Yes.

10:16AM 9 Q. Am I saying that correct, when I say primary?

10:16AM 10 A. Primary officer who processed Mr. Roggio.

10:16AM 11 Q. Primary officer. He was the one that Mr. Roggio and the
10:16AM 12 other passengers or people coming through this port would have
10:16AM 13 met at the Customs desk, I guess?

10:16AM 14 A. Correct.

10:16AM 15 Q. Is it like a desk, is it?

10:16AM 16 A. Yes. So as soon as the passenger gets off the plane, from
10:16AM 17 the gate, they walk through, and the first person -- the first
10:16AM 18 officer they see is the primary officer.

10:16AM 19 Q. Where is he at, a turnstile or --

10:16AM 20 A. So the setup is multiple booths that officers stay in and
10:16AM 21 process people throughout the day.

10:16AM 22 Q. And these -- when you're coming out of the line, you just
10:16AM 23 pick a booth -- there are several officers there?

10:17AM 24 A. Correct.

10:17AM 25 Q. And it's basically up to you or where you are in the line

10:17AM 1 that determines who this primary person is going to be?

10:17AM 2 A. Yes, there's lines -- there's somebody from the airport
10:17AM 3 that work -- that will direct people to what officer number
10:17AM 4 they should go to, to contain the line.

10:17AM 5 Q. Mr. -- is it Felney, Augustine? Was his first name Felney
10:17AM 6 or --

10:17AM 7 A. I believe so, yes.

10:17AM 8 Q. Okay, so this individual would have been the first one to
10:17AM 9 encounter Mr. Roggio; is that right?

10:17AM 10 A. Yes.

10:17AM 11 Q. And this is the individual that referred him for a
10:17AM 12 secondary inspection; is that right?

10:17AM 13 A. Yes.

10:17AM 14 Q. I see on Page 2 of your report, you state as much. I see
10:17AM 15 here, and I'm going to ask you, what is a CTR Lookout?

10:18AM 16 A. CTR Lookout is Counter Terrorism Response Lookout.

10:18AM 17 Q. Counter Terrorism Response Lookout. I see your report
10:18AM 18 says, Subject, meaning, Roggio, was referred to secondary as a
10:18AM 19 CTR Lookout. Can you explain that to us?

10:18AM 20 A. Yes, he was referred by the system automatically as a
10:18AM 21 Counter Terrorism Response Lookout, based on his P and R, which
10:18AM 22 is his travel identification.

10:18AM 23 Q. Travel identification, okay. Now, that's not something
10:18AM 24 that Officer Felney -- Augustine Felney would have done;
10:18AM 25 correct?

10:18AM 1 A. Correct.

10:18AM 2 Q. He wouldn't have put that in the system; is that right?

10:18AM 3 A. No, it's an automatic generated by a computer system,

10:19AM 4 based on the P and R and the fact that he was coming from a

10:19AM 5 conflict zone, Iraq. Anybody that came from Iraq or Syria, the

10:19AM 6 system -- the computer system would generate an additional

10:19AM 7 screening for that person.

10:19AM 8 Q. Okay, and I want to bring you down to -- I want to go to

10:19AM 9 the very bottom of Page 2 there, where you see -- you could see

10:19AM 10 Referral Reason History, referred by Augustine Felney, referral

10:19AM 11 date and time, it says that, the time 2/26/17, and it's

10:19AM 12 referred from Primary Airport Pack CTR one day lookout hit.

10:19AM 13 Could you explain that?

10:19AM 14 A. At the end of the referral, the system will also give an

10:19AM 15 automatic response that would generate, Referred by, the name,

10:19AM 16 the date, the time and the location of the officer, and the

10:20AM 17 comments that the officer put in the system, based on the

10:20AM 18 lookout.

10:20AM 19 Q. What is a one-day lookout hit?

10:20AM 20 A. One-day lookout hit is an automatic lookout placed in the

10:20AM 21 system by the computer system when it tracks people with P and

10:20AM 22 R's coming from conflict zones.

10:20AM 23 Q. Okay, do you know who put that information in the system

10:20AM 24 in this case? Only if you know?

10:20AM 25 A. I know it's coming from the National Targeting Center at

10:20AM 1 NTC in Washington, D.C., it's a branch within U.S. Customs and
10:20AM 2 Border Protection, and then they place bulk -- they make bulk
10:20AM 3 rules for specific interests that Customs has.

10:21AM 4 Q. All right. Did you ever speak to a -- prior to this
10:21AM 5 interview with Mr. Roggio, did you ever have the occasion to
10:21AM 6 speak with Homeland Security Agent Jeffrey Burke?

10:21AM 7 A. No.

10:21AM 8 Q. So you never met him in person?

10:21AM 9 A. No.

10:21AM 10 Q. He wasn't there that day that you recall?

10:21AM 11 A. I don't recall.

10:21AM 12 Q. Okay. And you don't recall having a conversation with him,
10:21AM 13 either, in person or, maybe, on the telephone; is that right?

10:21AM 14 A. Correct.

10:21AM 15 Q. All right.

10:21AM 16 A. But the fact that I put it in my report, they were there,
10:21AM 17 it's just that I don't remember.

10:21AM 18 Q. I notice you mentioned at the bottom in this report, and
10:21AM 19 we will talk about it a little bit more, but it says here that
10:21AM 20 you do note that Homeland Security Investigator Mundy was
10:22AM 21 there, as well as FBI Special Agent Vetrano was there, as well,
10:22AM 22 right?

10:22AM 23 A. Yes.

10:22AM 24 Q. Are they normally present -- is the FBI normally present
10:22AM 25 at a secondary inspection?

10:22AM 1 A. Yes.

10:22AM 2 Q. They are?

10:22AM 3 A. Well, while I was on the intelligence TTRT team, I want to
10:22AM 4 say I saw them on a daily basis, but different agents.

10:22AM 5 Q. All right. I mean, how many interviews -- I know you're
10:22AM 6 not 100 percent sure of this -- how many secondary interviews
10:22AM 7 did you conduct that day, on February 26, 2017?

10:22AM 8 A. Did I?

10:22AM 9 Q. Yes.

10:22AM 10 A. Two.

10:22AM 11 Q. Only two?

10:22AM 12 A. Only two.

10:22AM 13 Q. Was Agent Vetrano present on the other interview, if you
10:22AM 14 recall?

10:22AM 15 A. I don't remember, but I don't think I put it in my report,
10:22AM 16 so I don't think he was.

10:22AM 17 Q. And regarding Homeland Security Investigator Mundy, was he
10:23AM 18 present -- how often are members from Homeland Security present
10:23AM 19 on secondary interviews?

10:23AM 20 A. Very often, in my experience.

10:23AM 21 Q. Do you know if he was present on your earlier interview
10:23AM 22 that day?

10:23AM 23 A. No.

10:23AM 24 Q. These agents -- you testified -- do you recall speaking
10:23AM 25 with them, regarding Mr. Roggio?

10:23AM 1 A. I don't remember.

10:23AM 2 Q. You don't remember; right?

10:23AM 3 A. No.

10:23AM 4 Q. And I think the question Mr. Hinkley had asked you is, can
10:23AM 5 you recall any other interaction between Mr. Roggio and those
10:23AM 6 agents, Homeland Security Mundy and FBI Agent Vetrano, and you
10:24AM 7 don't recall any interaction; is that right?

10:24AM 8 A. No.

10:24AM 9 Q. Now, your job, when you -- how would you describe the
10:24AM 10 purpose of these inspections, both the primary -- did you ever
10:24AM 11 do a primary inspection?

10:24AM 12 A. Yes.

10:24AM 13 Q. The purpose of the primary inspection, as well as the
10:24AM 14 purpose or goal of the secondary inspection?

10:24AM 15 A. The primary purpose is to keep the country safe, so to
10:24AM 16 assess terrorist activities or affiliation or anything related
10:24AM 17 to national security, that's the first job of the primary
10:24AM 18 officer and secondary officer, and then determine if the person
10:24AM 19 is a good person or a bad person or about to commit a crime,
10:24AM 20 committed a crime, or it's good to go.

10:25AM 21 Q. So in other words -- and it says Customs Border
10:25AM 22 Protection, that is it, protecting the border; correct?

10:25AM 23 A. Correct.

10:25AM 24 Q. From the National Security threats, terroristic threats,
10:25AM 25 terror-type threats and, also, Customs, right, there's also

10:25AM 1 admissibility is an issue, as well?

10:25AM 2 A. Correct.

10:25AM 3 Q. When a traveler comes into the country, they must go

10:25AM 4 through an inspection to make sure that they're legally

10:25AM 5 admissible; is that right?

10:25AM 6 A. Correct.

10:25AM 7 Q. And to make sure all the items they're bringing in with

10:25AM 8 them are lawfully able to come into the country?

10:25AM 9 A. Yes.

10:25AM 10 Q. I guess, some people are not admissible; is that right?

10:25AM 11 A. Correct.

10:25AM 12 Q. Would -- a citizen is typically admissible?

10:25AM 13 A. A United States citizen is always admissible.

10:25AM 14 Q. And then there can be so many different types of things

10:25AM 15 coming into the country, certain things, obviously, can't come

10:25AM 16 in, like, contraband, drugs and such; right?

10:26AM 17 A. Correct.

10:26AM 18 Q. And I'm sure some other things are on the list that aren't

10:26AM 19 allowed, maybe, agriculture, produce or things like that?

10:26AM 20 A. Yes.

10:26AM 21 Q. You're aware of pretty much all these things; right?

10:26AM 22 A. Yes.

10:26AM 23 Q. In this particular case, you did speak to Mr. Roggio

10:26AM 24 regarding his citizenship?

10:26AM 25 A. Yes -- well, I saw his temporary passport, and I knew it

10:26AM 1 wasn't a question of admissibility. He was an American, so I'm
10:26AM 2 going to let him go at the end.

10:26AM 3 Q. Okay. And, also, I know that he had some bags, and they
10:26AM 4 were -- they were gone through or looked at or inspected, let's
10:26AM 5 say?

10:26AM 6 A. I want to say, yes, but I wasn't there for that, I was
10:26AM 7 only the officer instructed to conduct the interview.

10:26AM 8 Q. Okay, and if you look at your report, again, it's
10:26AM 9 Government Exhibit 1, it does mention, I think -- okay, if we
10:27AM 10 look at, Bag examined, you know what that is?

10:27AM 11 A. Yes.

10:27AM 12 Q. It indicates they were searched; right?

10:27AM 13 A. Yes.

10:27AM 14 Q. And that there was no -- it was negative, there was
10:27AM 15 nothing in those bags that required a positive indicator?

10:27AM 16 A. Yes.

10:27AM 17 Q. Negative means that everything was admissible?

10:27AM 18 A. Yes.

10:27AM 19 Q. Okay, so you're looking for admissibility, at that point,
10:27AM 20 as well. How are you notified -- where were you when Ross
10:27AM 21 Roggio came through the primary inspection and met Agent Felney
10:27AM 22 Augustine?

10:27AM 23 A. I don't remember.

10:27AM 24 Q. How are you notified that there's -- that you need to do a
10:27AM 25 second interview, if you recall, or typically?

10:27AM 1 A. I don't remember exactly the circumstances, but typically
10:28AM 2 I would come in to Terminal 4 of J.F.K. Airport and sign in for
10:28AM 3 the day, and my supervisor will instruct me with my duties for
10:28AM 4 the day. So the way I came to meet Mr. Roggio was probably my
10:28AM 5 supervisor said, Go handle something at Terminal 8, then, at
10:28AM 6 that time, go to Terminal 1 and talk to -- and do whatever
10:28AM 7 lookouts you have for the day over there.

10:28AM 8 And that would be every day, on a regular basis, what I
10:28AM 9 would do. I would drive around from one place to the other to
10:28AM 10 speak to passengers.

10:28AM 11 Q. So you're not in another room, at another desk, behind
10:28AM 12 that primary inspection line?

10:28AM 13 A. Once I'm ready for the interview, yes, I have to be in the
10:28AM 14 secondary inspection area.

10:28AM 15 Q. So you go to that area, and there's an area right there?

10:29AM 16 A. Yes.

10:29AM 17 Q. Not far from where Mr. Roggio would have encountered his
10:29AM 18 primary inspection?

10:29AM 19 A. Correct.

10:29AM 20 Q. You went there that day?

10:29AM 21 A. Yes.

10:29AM 22 Q. You described -- again, you don't recall, specifically,
10:29AM 23 all the circumstances that day; right?

10:29AM 24 A. Yes.

10:29AM 25 Q. But you do recall that it was busy that day, and that

10:29AM 1 there was -- they improvised with the room, is that it?

10:29AM 2 A. Yes.

10:29AM 3 Q. And the room was about 10 feet x 12 feet?

10:29AM 4 A. Yes.

10:29AM 5 Q. And it had a desk and a chair?

10:29AM 6 A. Yes.

10:29AM 7 Q. Do you recall if there was any more -- how many chairs
10:29AM 8 there would have been?

10:29AM 9 A. I don't remember.

10:29AM 10 Q. You don't remember. You do remember a desk and a chair,
10:29AM 11 okay. Do you recall, specifically, where you first encountered
10:29AM 12 Mr. Roggio?

10:29AM 13 A. Probably, in the secondary area, secondary waiting room
10:29AM 14 area.

10:29AM 15 Q. All right. Now, again, I know -- and I'm not trying to
10:30AM 16 trick you here -- I know that you said, probably, in the
10:30AM 17 secondary waiting area. If someone were in the secondary
10:30AM 18 waiting area, at that particular place, on the date when Mr.
10:30AM 19 Roggio was referred for secondary, is there a bathroom there?

10:30AM 20 A. Yes.

10:30AM 21 Q. Is it a holding cell-type of situation?

10:30AM 22 A. Yes.

10:30AM 23 Q. And if that individual -- if someone were waiting -- if
10:30AM 24 someone had been referred for a secondary inspection and they
10:30AM 25 were in that waiting area -- is it a room with, like, chairs

10:30AM 1 where people wait?

10:30AM 2 A. Yes.

10:30AM 3 Q. Is there another agent in that room that, kind of, is
10:30AM 4 watches things?

10:30AM 5 A. Yes.

10:30AM 6 Q. Where does he or she sit?

10:30AM 7 A. By the door.

10:30AM 8 Q. Okay, so how big is that room, that secondary --

10:30AM 9 A. Probably, almost as big as this(indicating).

10:30AM 10 Q. How many people could be in there at one time?

10:30AM 11 A. At least, 20 to 30 people at one time.

10:31AM 12 Q. And this is where these people are directed, after the
10:31AM 13 primary inspection, when they're going to have a secondary, and
10:31AM 14 they're waiting there for you to come and do that secondary;
10:31AM 15 right?

10:31AM 16 A. Yes.

10:31AM 17 Q. And you mentioned that there's, also, another CBP agent at
10:31AM 18 the door there?

10:31AM 19 A. Yes.

10:31AM 20 Q. And I guess -- are they free to walk around -- are they
10:31AM 21 free to leave the room, without checking with that agent?

10:31AM 22 A. They're not allowed to leave the room until they're
10:31AM 23 completely 100 percent cleared.

10:31AM 24 Q. And if they have to use the bathroom there, there is a
10:31AM 25 bathroom, but it's in a holding cell; right?

10:31AM 1 A. Yes.

10:31AM 2 Q. If Mr. Roggio had to use that bathroom on the date in
10:31AM 3 question, on February 26, 2017, he would have had to use that
10:31AM 4 holding cell, as well; correct?

10:31AM 5 A. Correct.

10:31AM 6 Q. Who would let him in that area?

10:31AM 7 A. Another officer.

10:31AM 8 Q. So is it adequately staffed? Are there a lot of --

10:31AM 9 A. I want to say, in my experience, for the most part, is
10:32AM 10 there are never enough officers working.

10:32AM 11 Q. Fair enough. Now, if somebody has -- did you ever do that
10:32AM 12 job?

10:32AM 13 A. Yes, just to cover for somebody else that had to handle
10:32AM 14 something else for the moment.

10:32AM 15 Q. All right, you said it's busy that day. If someone had to
10:32AM 16 use the bathroom, they would have to go to the holding cell;
10:32AM 17 right?

10:32AM 18 A. Yes.

10:32AM 19 Q. Could they lock the door behind them?

10:32AM 20 A. The door locks automatically, I think.

10:32AM 21 Q. So if an agent -- if an individual had to use the
10:32AM 22 facilities, the men's room or the bathroom, and he was in that
10:32AM 23 big room, the secondary area, he would be escorted to this
10:32AM 24 holding cell, where he would use the bathroom, and the door
10:32AM 25 would lock behind him; right?

10:32AM 1 A. Yes.

10:32AM 2 Q. And he would have to, essentially -- someone would have to
10:32AM 3 open the door to let him out?

10:32AM 4 A. Yes.

10:32AM 5 Q. And I know you don't recall that, you don't recall exactly
10:33AM 6 where you met Roggio that day; is that right?

10:33AM 7 A. Yes.

10:33AM 8 Q. Could it have been that he was in the bathroom and you
10:33AM 9 escorted him from the bathroom with another agent? I'm just
10:33AM 10 asking you.

10:33AM 11 A. It could be, but I don't remember if that happened.

10:33AM 12 Q. Thank you. When an individual approaches the primary
10:33AM 13 inspection and he encounters the primary inspection officer,
10:33AM 14 like, in this case, Augustine Felney, and for whatever reason,
10:33AM 15 there's going to be a secondary inspection, what happens then?

10:33AM 16 Are they directed to go down the hall and make a right? Or
10:33AM 17 how would they get to that secondary inspection area?

10:33AM 18 A. Could you repeat the first part of the question?

10:33AM 19 Q. In other words, when someone approaches the primary
10:33AM 20 inspection area and they encounter the primary inspection
10:33AM 21 officer, in this case, Augustine Felney, and that officer, for
10:34AM 22 whatever reason, determines that a secondary inspection is
10:34AM 23 warranted. What happens then?

10:34AM 24 Like, how does this individual, the traveler, make it to
10:34AM 25 that secondary inspection area or room?

10:34AM 1 A. So in my experience, the primary officer will close his
10:34AM 2 booth and escort the passenger to the secondary area. However,
10:34AM 3 because of the volume at J.F.K., many times, there will be a
10:34AM 4 person that would be just assigned to direct the flow of
10:34AM 5 people, so whoever is getting referred, they would take that
10:34AM 6 person and direct them to secondary, so in this way, they will
10:34AM 7 not get lost in the crowd and with all the passengers that were
10:34AM 8 already cleared.

10:34AM 9 So in this case, I want to say the primary officer did it,
10:34AM 10 but if the line was backed up and there was a lot of people
10:34AM 11 waiting to get processed, he probably had another officer
10:34AM 12 taking the passenger into secondary area.

10:35AM 13 It's just for separation of the people who were processed
10:35AM 14 and were cleared and the ones that need secondary inspection.

10:35AM 15 Q. Okay, so, at that point in time, someone is
10:35AM 16 going -- either, the primary officer or the person who is kind
10:35AM 17 of helping out is going to actually escort this person to that
10:35AM 18 area?

10:35AM 19 A. They need to do that, yes, that's how they do it every
10:35AM 20 time. Because there are instances when we have had criminals
10:35AM 21 escape without being escorted.

10:35AM 22 Q. I understand. Now, I'm going to talk a little bit about
10:36AM 23 the relationship between the primary inspector and the
10:36AM 24 secondary inspector, you, in this case, and just some of your
10:36AM 25 testimony.

10:36AM 1 And I think what you said, when you were describing this
10:36AM 2 process, not necessarily with Mr. Roggio, but the process, when
10:36AM 3 you were asked about that, the primary inspector can refer a
10:36AM 4 person for additional screening or assessment; is that a fair
10:36AM 5 statement?

10:36AM 6 A. Yes.

10:36AM 7 Q. And, then, your job, as a secondary inspection inspector,
10:36AM 8 is to basically process that. And I think you said -- and
10:36AM 9 correct me if I'm wrong -- it's to determine or look at what
10:36AM 10 issue was raised or what issue was presented; is that right?

10:36AM 11 A. Yes.

10:36AM 12 Q. Will the primary say there's an issue, say, in this case,
10:37AM 13 generally, with a passport? Or there's an issue with something
10:37AM 14 else, citizenship or alien issue?

10:37AM 15 A. So the way primary officer refers a passenger into
10:37AM 16 secondary is, also, based on the seriousness of the lookout,
10:37AM 17 let's say. If a person has issues, in terms of passport, and
10:37AM 18 also has a lookout in the system, if the lookout in the system
10:37AM 19 is a little more serious than the passport problem, the primary
10:37AM 20 officer is instructed to address the most serious issue with
10:37AM 21 the passenger first, before anything else. In this case, it was
10:37AM 22 Counter Terrorism Response augmented interview.

10:37AM 23 Q. Okay, and I was just going to ask you that. So in other
10:37AM 24 words, when you know you have to work, when you know you have
10:37AM 25 to do a secondary inspection, you know why, you know what the

10:38AM 1 primary officer's concern was?

10:38AM 2 A. Yes.

10:38AM 3 Q. It's, like, in other words, you start off with that, and
10:38AM 4 if I could just speak freely, Well, I'm referring him because
10:38AM 5 of this, he's got a problem with his passport, or he has a CTR
10:38AM 6 Lookout?

10:38AM 7 A. Yes.

10:38AM 8 Q. They tell you, right? They would tell you?

10:38AM 9 A. If they don't tell me, I see it in the system, I see it
10:38AM 10 right there.

10:38AM 11 Q. That was the issue here, that was the issue that Mr.
10:38AM 12 Roggio was having; correct?

10:38AM 13 A. Yes.

10:38AM 14 Q. All right, it would have been the CTR Lookout Counter
10:38AM 15 Terrorism Response?

10:38AM 16 A. Yes, computer-generated lookout.

10:38AM 17 Q. And I think when you were testifying, you were saying that
10:38AM 18 you were instructed to interview him, to interview Roggio?

10:38AM 19 A. I knew I had to speak to him, based on the CTR Lookout.

10:39AM 20 Q. So it was just that fact alone that caused you to
10:39AM 21 interview him?

10:39AM 22 A. As far as I remember, yes.

10:39AM 23 Q. You were never asked by the FBI Agent Vetrano or Homeland
10:39AM 24 Security, either, Burke or this other fella, Mundy, to
10:39AM 25 interview him?

10:39AM 1 A. I don't remember that.

10:39AM 2 Q. You don't remember, okay. You do recall they were present,
10:39AM 3 though, during the interview?

10:39AM 4 A. Yes.

10:39AM 5 Q. Again, some of these -- discussing your techniques or the
10:39AM 6 way these interviews generally go is, you mentioned those five

10:39AM 7 questions, is that it, you know, the basics, who, where, when,

10:40AM 8 how, and what the event is like or something? In other words,

10:40AM 9 I'm coming home to -- I was visiting my relatives or something
10:40AM 10 like that?

10:40AM 11 A. Correct.

10:40AM 12 Q. I was on vacation?

10:40AM 13 A. Yes.

10:40AM 14 Q. These are the things, right. And he was -- so you

10:40AM 15 asked -- these questions that you asked him were, essentially,
10:40AM 16 routine?

10:40AM 17 A. Yes.

10:40AM 18 Q. And he was very forthcoming?

10:40AM 19 A. Yes.

10:40AM 20 Q. Not only that, he had -- he even gave more than what you
10:40AM 21 had required?

10:40AM 22 A. That's what I felt at that moment, yes.

10:40AM 23 Q. He was polite and he was a gentleman, those were your
10:40AM 24 words; right?

10:40AM 25 A. Yes.

10:40AM 1 Q. And he told you -- again, when we look at this, this is a
10:40AM 2 report, you were questioned a little bit about some of the
10:40AM 3 things that he had mentioned to you, regarding him being
10:40AM 4 kidnapped.

10:40AM 5 A. Yes.

10:40AM 6 Q. And that's happened before, right, you've heard that
10:40AM 7 before, I'm sure, from international travelers?

10:41AM 8 A. Yes.

10:41AM 9 Q. And he had told you about some business dealings that he
10:41AM 10 had in that country, in Iraq?

10:41AM 11 A. Yes.

10:41AM 12 Q. And he had told you that there were -- you know, again, we
10:41AM 13 have your report, so I know your report is better than your
10:41AM 14 recollection -- but he had mentioned that there was issues
10:41AM 15 regarding them claiming that, you know, he owed them money, and
10:41AM 16 so on and so forth; right?

10:41AM 17 A. Yes.

10:41AM 18 Q. That was the reason or part of the reason?

10:41AM 19 A. Yes.

10:41AM 20 Q. So regarding these two -- if there were two reasons for
10:41AM 21 primary inspection to refer him to you, if one of them was the
10:41AM 22 passport issue, you checked that out; is that right?

10:41AM 23 A. Yes.

10:41AM 24 Q. You talked to him about his passport, and he had satisfied
10:42AM 25 you that --

10:42AM 1 A. I don't remember if I told him, but for the most part, if
10:42AM 2 somebody comes up with a temporary passport, we want to know
10:42AM 3 the circumstances of how they lost it. And we inform them this
10:42AM 4 is only in case -- we need to know where the location where you
10:42AM 5 lost it, in case somebody else will try to use it as an
10:42AM 6 imposter and pose as you coming into the United States.

10:42AM 7 Q. All right. And did you talk to him about that; right?

10:42AM 8 A. Yes, I believe I speak about the subject to everybody that
10:42AM 9 lost their passport or had it stolen.

10:42AM 10 Q. And he answered your questions in such a way that he
10:42AM 11 satisfied you; is that right?

10:42AM 12 A. Yes.

10:42AM 13 Q. And regarding -- then, this other thing, the CTR hit,
10:42AM 14 again, that was something that you -- what are you required to
10:42AM 15 do, then, on a CTR hit? What's that about? How do you resolve
10:42AM 16 that?

10:42AM 17 A. The CTR is mainly -- in his case, it was for him traveling
10:42AM 18 to ISIS-infested area in Iraq, and at that time, it was a war
10:43AM 19 zone, meaning, everybody was coming with different type of
10:43AM 20 stories, ranging from military, American military personnel,
10:43AM 21 retired and going over there and become super heroes and fight
10:43AM 22 against ISIS, and some of them, maybe, getting kidnapped and
10:43AM 23 then may turn against other Americans or different stories.

10:43AM 24 It pretty much was a war conflict zone, so I conducted
10:43AM 25 many interviews on returning Americans who fought against ISIS

10:43AM 1 and the terrorists in Iraq and Syria, and they told me terrible
10:43AM 2 stories. But, again, valuable information for -- in the whole
10:44AM 3 scheme of defending the group.

10:44AM 4 Q. So you've heard a lot about that -- you're familiar with
10:44AM 5 all of that?

10:44AM 6 A. Yes.

10:44AM 7 Q. Based upon your experience and the facts presented to you
10:44AM 8 that day, Mr. Roggio, again, he satisfied your concern, if
10:44AM 9 there was one, that he should be admitted; is that right?

10:44AM 10 A. Yes.

10:44AM 11 Q. All right. So you had determined, then, as a result of his
10:44AM 12 interview, his secondary interview and the inspection of his
10:44AM 13 bags, that there was no reason to deny him admissibility;
10:44AM 14 correct?

10:44AM 15 A. Correct.

10:44AM 16 Q. And that he had nothing that needed to be confiscated or
10:44AM 17 was not admissible into the country; is that right?

10:44AM 18 A. Correct.

10:44AM 19 Q. And, in fact, you and Customs Border Protection did not
10:44AM 20 seize any of his devices that day; correct?

10:44AM 21 A. Correct.

10:44AM 22 Q. But you do know that devices were seized; right?

10:44AM 23 A. Yes.

10:44AM 24 Q. And they were seized by Homeland Security and FBI Agent
10:45AM 25 Vetrano?

10:45AM 1 A. Yes.

10:45AM 2 Q. So you had -- the question is, you, essentially, had
10:45AM 3 no -- now, you can, as a Customs Border Protection Agent,
10:45AM 4 you're able to look at the electronic devices; correct?

10:45AM 5 A. Yes.

10:45AM 6 Q. Do you recall, in that room, when you were talking to Mr.
10:45AM 7 Roggio, do you recall his devices being present?

10:45AM 8 A. Vaguely, yes.

10:45AM 9 Q. Okay. And they would normally be there, as well; correct?

10:45AM 10 A. Yes, they would be on the table.

10:45AM 11 Q. His bags would have been there, as well; right?

10:45AM 12 A. No. For the most part, I would have another officer going
10:45AM 13 through the bags, and I'm assuming that that's what happened
10:45AM 14 while I was conducting the interview, just to speed up the
10:45AM 15 process a little bit for the passenger.

10:45AM 16 Q. Are you armed, typically, on these days?

10:46AM 17 A. Yes.

10:46AM 18 Q. You're carrying -- are you in uniform?

10:46AM 19 A. No.

10:46AM 20 Q. How are you dressed, typically?

10:46AM 21 A. For the -- for this particular team, I was in plain
10:46AM 22 clothes most of the time.

10:46AM 23 Q. Do you have a side arm?

10:46AM 24 A. Yes.

10:46AM 25 Q. Pistol?

10:46AM 1 A. Yes, but it would be covered.

10:46AM 2 Q. It would be covered?

10:46AM 3 A. Yes.

10:46AM 4 Q. By your jacket?

10:46AM 5 A. Yes.

10:46AM 6 Q. And you had your jacket on?

10:46AM 7 A. Yes.

10:46AM 8 Q. These other agents, FBI Agent Vetrano and Homeland
10:46AM 9 Security Mundy, do you recall them being armed?

10:46AM 10 A. They have to be armed, yes.

10:46AM 11 Q. So they're armed, as well?

10:46AM 12 A. Yes.

10:46AM 13 Q. And, again, it's a service pistol; is that right?

10:46AM 14 A. Yes.

10:46AM 15 Q. They have to be, that's a requirement?

10:46AM 16 A. Yes.

10:46AM 17 Q. Do you recall Mr. -- that particular interview with Mr.
10:46AM 18 Roggio -- him being offered any type of refreshments or
10:46AM 19 beverages?

10:46AM 20 A. No.

10:46AM 21 Q. He didn't -- he wasn't; is that fair?

10:47AM 22 A. Not from me, anyway.

10:47AM 23 Q. Is that typically offered?

10:47AM 24 A. Yes.

10:47AM 25 Q. It is?

10:47AM 1 A. Yes.

10:47AM 2 Q. But you don't recall, okay. Do you recall -- were you
10:47AM 3 standing or sitting for that interview?

10:47AM 4 A. I don't remember. But I sit down most of the time because
10:47AM 5 I'm tired from going around.

10:47AM 6 Q. All right, so you probably were sitting that time, is that
10:47AM 7 it?

10:47AM 8 A. Yes.

10:47AM 9 Q. And the other agents, would they have been sitting or
10:47AM 10 standing, if you know?

10:47AM 11 A. I don't remember that part.

10:47AM 12 Q. You don't remember, okay. You mentioned that there was
10:47AM 13 yourself, Agent Vetrano, Homeland Security Mundy, and there
10:47AM 14 were other agents, as well, in the room, Customs Border
10:47AM 15 Protection?

10:47AM 16 A. No.

10:47AM 17 Q. Just the three of you?

10:47AM 18 A. Yes, it would be just me from Customs.

10:48AM 19 Q. Again, we were talking about electronic devices. Now, you
10:48AM 20 know that you can look at those devices; right?

10:48AM 21 A. Yes.

10:48AM 22 Q. You can pick them up and manually check them --

10:48AM 23 A. Yes.

10:48AM 24 Q. -- to make sure they're actual devices?

10:48AM 25 A. Correct.

10:48AM 1 Q. Have you ever encountered situations where there's false
10:48AM 2 compartments or?

10:48AM 3 A. Yes.

10:48AM 4 Q. So that, certainly, could be a case; right?

10:48AM 5 A. Yes.

10:48AM 6 Q. Do you recall looking at the devices that day?

10:48AM 7 A. No, I don't remember.

10:48AM 8 Q. So you could manually touch them and inspect them, and you
10:48AM 9 could require that the traveler turn them on, as well; right?

10:48AM 10 A. Yes.

10:48AM 11 Q. So in other words, if you ask him -- you could ask him for
10:48AM 12 his passcode, like, on a cell phone, if it's like three things
10:48AM 13 to open it up, you could say, Give me -- I'm sorry, strike
10:48AM 14 that. You could say, Please give me your passcode so I could
10:48AM 15 access your device; right?

10:48AM 16 A. Yes.

10:48AM 17 Q. They're required to do that, under the regulations;
10:48AM 18 correct?

10:48AM 19 A. Yes.

10:48AM 20 Q. Then, you could use that passcode to open up the device
10:48AM 21 and to basically look at it, scroll through it. Now, you're not
10:49AM 22 able to put -- but that's under your authority, as you know it,
10:49AM 23 is that right?

10:49AM 24 A. Yes.

10:49AM 25 Q. Have you done that in the past?

10:49AM 1 A. Many times.

10:49AM 2 Q. Many times, okay. If you want to, there are certain
10:49AM 3 circumstances where you can make a copy of it and give it back
10:49AM 4 to the traveler, do you know -- have you ever done that before
10:49AM 5 with electronic devices?

10:49AM 6 A. Could you repeat the question, please?

10:49AM 7 Q. In other words, under certain circumstances, if you had a
10:49AM 8 concern about some of the -- after opening up the device and
10:49AM 9 viewing parts of its contents, if you had a concern that,
10:49AM 10 perhaps, further inspection of that device was warranted, you
10:49AM 11 can, either, detain the device or make a copy of it and give
10:49AM 12 the device back to the traveler and let him go on his way; is
10:49AM 13 that right?

10:49AM 14 A. Yes, we can detain devices, but it didn't happen in this
10:49AM 15 case.

10:50AM 16 Q. And you could also make a copy, correct? Do you know what
10:50AM 17 I mean by that? Has that ever been done, to your knowledge,
10:50AM 18 where a copy of the device was made, a copy of the hard drive
10:50AM 19 or the internal operations?

10:50AM 20 A. Okay, I understand. Yes.

10:50AM 21 Q. So in other words, that way, you have -- the evidence is
10:50AM 22 preserved, so to speak, and the device itself -- the traveler
10:50AM 23 still has the benefit of walking out of the airport with the
10:50AM 24 device; right?

10:50AM 25 A. Yes.

10:50AM 1 Q. Do you encounter a lot of -- when you start -- you had
10:50AM 2 noted that, sometimes, if a traveler doesn't necessarily
10:50AM 3 appreciate your inspections and such, you would note that on a
10:50AM 4 report. Do you ever notice, when it comes to these, you going
10:50AM 5 through their electronic devices, that there are concerns, that
10:50AM 6 the travelers express a concern like that?

10:50AM 7 A. Sometimes, yes.

10:50AM 8 Q. Okay. And what is it a privacy concern, is that what
10:50AM 9 they're mostly complaining of?

10:51AM 10 A. Yes, I guess, yes.

10:51AM 11 Q. And you talked to Mr. Roggio about who, where, when, how
10:51AM 12 and what was doing, and one of the reasons I think he said he
10:51AM 13 was coming back in the country that he told you was to see his
10:51AM 14 father; right?

10:51AM 15 A. Yes.

10:51AM 16 Q. And did he -- I think he told you -- did he tell you that
10:51AM 17 his father was 93 years old?

10:51AM 18 A. I don't remember that part, the only part I remember is
10:51AM 19 that he was -- his father is sick and he needs to go see him in
10:51AM 20 the hospital.

10:51AM 21 Q. And, again, your report would be -- you would know -- if
10:51AM 22 it's in your report, that would be more accurate or better
10:51AM 23 serve your memory, at the time; right?

10:51AM 24 A. Yes.

10:51AM 25 Q. Are these -- I think your interaction with Mr. Roggio was

10:52AM 1 15 to 20 minutes was your testimony?

10:52AM 2 A. Yes.

10:52AM 3 Q. What did you do afterwards? Did you just leave? Did you

10:52AM 4 leave the room or --

10:52AM 5 A. I would leave the room immediately, yes.

10:52AM 6 Q. And do you recall leaving the room then?

10:52AM 7 A. No.

10:52AM 8 Q. What happens after you leave the room? What happens to the

10:52AM 9 traveler? Do you recall what happened to Mr. Roggio at that

10:52AM 10 time?

10:52AM 11 A. I would give him his passport back and tell him he's good

10:52AM 12 to go.

10:52AM 13 Q. And then he would leave the room, as well?

10:52AM 14 A. Yes.

10:52AM 15 Q. Is somebody going to escort him through?

10:52AM 16 A. Maybe a little bit, because, what I remember, Terminal 1

10:52AM 17 is a little bit of a maze, so just for his security, so he's

10:52AM 18 not going to bump into something harmful to him, just direct

10:52AM 19 him to go the right way to the exit.

10:52AM 20 Q. Are these interviews recorded?

10:52AM 21 A. Electronically?

10:52AM 22 Q. Yes, is there recording, like, in that interview room?

10:52AM 23 A. No.

10:52AM 24 Q. There's no recording being taken of them?

10:53AM 25 A. No.

10:53AM 1 Q. Audio, video or mere audio?

10:53AM 2 A. No, not that I know of.

10:53AM 3 Q. In this particular case, you said this, "Customs Border
10:53AM 4 Protection did not seize the devices". Correct?

10:53AM 5 A. Correct.

10:53AM 6 Q. You had nothing to do with the seizure of those devices?

10:53AM 7 A. No.

10:53AM 8 Q. You didn't refer -- you didn't direct anyone to seize
10:53AM 9 them?

10:53AM 10 A. No.

10:53AM 11 Q. And you had no suspicion that there would be anything on
10:53AM 12 those devices that would require them being seized?

10:53AM 13 A. No.

10:53AM 14 MR. BARTOLAI: May I have a moment, Judge?

10:53AM 15 THE COURT: Sure

10:55AM 16 BY MR. BARTOLAI:

10:55AM 17 Q. So in your training as a Customs Border Protection Agent,
10:55AM 18 are you required to undergo training on a regular basis?

10:55AM 19 A. Yes -- it depends.

10:55AM 20 Q. It depends. Like, what kind of -- do you have any type of
10:55AM 21 yearly requirements where you have to go for refreshers on any
10:55AM 22 of these things? Policy, procedure?

10:55AM 23 A. Yes, everybody, as an officer, has to refresh their memory
10:55AM 24 on policy, Immigration law, Customs law.

10:55AM 25 Q. Right.

10:55AM 1 A. Hazardous materials, all that stuff, every year.

10:55AM 2 Q. Every year. I guess, part of your job is that you've got
10:55AM 3 to keep up on that stuff; is that right?

10:55AM 4 A. Yes.

10:55AM 5 MR. BARTOLAI: I have a few exhibits I would like to have
10:55AM 6 the witness see, Your Honor, so I don't know if I should
10:56AM 7 approach her or should I give them to your clerk or --

10:56AM 8 THE COURT: Give them to my courtroom deputy.

10:56AM 9 BY MR. BARTOLAI:

10:56AM 10 Q. Ms. Morales, if you would like -- I could put them on the
10:56AM 11 computer screen, if that would be helpful.

10:57AM 12 THE COURT: Do you have any objection, Mr. Hinkley?

10:57AM 13 MR. HINKLEY: No, although, I would ask for a proffer as to
10:57AM 14 the relevancy of the documents.

10:57AM 15 MR. BARTOLAI: I'm going to identify the exhibits, Your
10:57AM 16 Honor. The witness has these now.

10:57AM 17 Defendant's Exhibit D is a Primary Impact Assessment For
10:57AM 18 Border Searches Of Electronic Devices, this is authored by the
10:57AM 19 U.S. Department of Homeland Security, and it's dated August 25,
10:57AM 20 2009.

10:57AM 21 And then there's a U.S. Customs and Border Protection
10:57AM 22 directive. This is Government's -- or Defendant's Exhibit E,
10:57AM 23 Customs Border Protection Directive No. 3340-49A, and that's
10:57AM 24 issued January 4 of 2018.

10:57AM 25 And, then, as Defendant's Exhibit F, is also another -- or

10:57AM 1 an updated U.S. Department of Homeland Security Privacy Impact
10:58AM 2 Assessment For Customs Border Protection Border Searches Of
10:58AM 3 Electronic Devices.

10:58AM 4 So I have these three exhibits. It's not my intention,
10:58AM 5 Your Honor, to quiz or question Mrs. Morales about these or the
10:58AM 6 particulars of these, but instead to have her authenticate
10:58AM 7 them, as, you know, updates of the policy and things that she
10:58AM 8 would be familiar with, as these border searches and techniques
10:58AM 9 have evolved in the past few years, since Mr. Roggio's search.

10:58AM 10 THE COURT: Mr. Hinkley?

10:58AM 11 MR. HINKLEY: I'm not sure that they're relevant for these
10:58AM 12 proceedings, inasmuch as the witness has already indicated that
10:58AM 13 her agency did not detain the electronic devices in this case,
10:58AM 14 it was actually a Homeland Security investigation.

10:58AM 15 THE COURT: That seems to be a valid point.

10:58AM 16 MR. BARTOLAI: Judge, my concern is, I know that
10:59AM 17 it's -- they would apply -- they're authored by Homeland
10:59AM 18 Security, and, although, she has indicated that Customs and
10:59AM 19 Border Protection did not seize the devices, these policies
10:59AM 20 pertain to Customs Border Protection, as well as to Homeland
10:59AM 21 Security, and I would like to have them, as part of the record,
10:59AM 22 so that, as the case progresses, we can -- I guess, I could ask
10:59AM 23 the Court to take Judicial notice of them, but I thought the
10:59AM 24 best thing would be to have the witness authenticate them.

10:59AM 25 THE COURT: Well, I can take Judicial notice of Official

10:59AM 1 Government Regulations, to the extent that's what these are.

10:59AM 2 Alternatively, if you wish, you can present these documents to

10:59AM 3 someone from Homeland Security who, I'm certain, will testify.

10:59AM 4 MR. BARTOLAI: Okay, that would work, as well.

10:59AM 5 THE COURT: All right. In that case, do you have anything

11:00AM 6 else for her?

11:00AM 7 MR. BARTOLAI: One moment. No, I'm fine, thanks.

11:00AM 8 THE COURT: Redirect?

11:00AM 9 MR. HINKLEY: If I may, Your Honor, just a few quick

11:00AM 10 questions.

11:00AM 11 REDIRECT EXAMINATION

11:00AM 12 BY MR. HINKLEY:

11:00AM 13 Q. Ms. Morales, during your cross examination, Mr. Bartolai

11:00AM 14 had inquired about Mr. Roggio being referred to secondary, and

11:00AM 15 you had indicated -- and I want to make sure I have this clear

11:00AM 16 -- that Mr. Roggio would have been referred to you, because he

11:00AM 17 was traveling from Iraq, regardless of anything else, the

11:00AM 18 system would have referred him to you, in any event; is that

11:00AM 19 correct?

11:00AM 20 A. Correct.

11:00AM 21 Q. You also indicated, if I heard your testimony correctly,

11:00AM 22 that it's not unusual to have agents from the FBI or from

11:01AM 23 Homeland Security Investigations present, especially, during

11:01AM 24 this time frame when your job was to interview folks who were

11:01AM 25 traveling from the war zones of where ISIS was involved; is

11:01AM 1 that correct?

11:01AM 2 A. That is correct.

11:01AM 3 Q. So it would not have been unusual for the two agents to be
11:01AM 4 there for Mr. Roggio's secondary inspection?

11:01AM 5 A. Correct.

11:01AM 6 Q. Finally, I just want to make sure I understand your
11:01AM 7 testimony -- well, actually, I have two areas, very quickly.

11:01AM 8 Mr. Bartolai was speaking to you a little bit about the
11:01AM 9 bathroom facilities that were available to Mr. Roggio and other
11:01AM 10 folks who were referred to secondary inspection.

11:01AM 11 Now, this area is a controlled area by the Government, is
11:01AM 12 that correct, meaning, that you want to make sure folks are not
11:01AM 13 able to dispose of contraband, and that they're not allowed to
11:02AM 14 destroy evidence; is that right?

11:02AM 15 A. Yes.

11:02AM 16 Q. And is that, at least, part of the reason why the area is
11:02AM 17 set up as it is?

11:02AM 18 A. Yes.

11:02AM 19 Q. Go ahead.

11:02AM 20 A. In many instances, people use the rest rooms to flush down
11:02AM 21 drugs and documents and any evidence of crimes.

11:02AM 22 Q. Is that, also, a reason why Customs and Border Protection
11:02AM 23 would take electronic devices from a traveler, prior to the
11:02AM 24 interview of the traveler?

11:02AM 25 A. Yes.

11:02AM 1 Q. So that the traveler would not be able to erase or tamper
11:02AM 2 with evidence that may be in the electronic devices?

11:02AM 3 A. Yes, and, also, for their own safety, so they're not going
11:03AM 4 to use it as a weapon towards the officer or towards
11:03AM 5 themselves.

11:03AM 6 Q. Finally, Mr. Bartolai had asked you on a couple different
11:03AM 7 occasions whether or not Mr. Roggio satisfied you, in regards
11:03AM 8 to his admittance to the United States, and I believe you
11:03AM 9 indicated, Yes, he did.

11:03AM 10 A. Yes.

11:03AM 11 Q. I want to make sure that's clear on the record, in regards
11:03AM 12 to what that means.

11:03AM 13 In other words, one of the areas that you looked into was
11:03AM 14 why Mr. Roggio had lost his original passport and had been
11:03AM 15 issued a temporary passport; is that correct?

11:03AM 16 A. Yes.

11:03AM 17 Q. When you say that you are satisfied that he was able to be
11:04AM 18 admitted, you're not indicating, are you, that you were
11:04AM 19 satisfied that he was, in fact, kidnapped and, in fact, these
11:04AM 20 things happened to him, but rather you were satisfied he is the
11:04AM 21 actual holder of the passport, temporary passport, which would
11:04AM 22 allow him to be admitted. Is that an accurate statement?

11:04AM 23 A. Yes. His kidnapping situation, as much as I didn't really
11:04AM 24 believe it, I had to, for that day and that specific reason, I
11:04AM 25 had to treat it as it happened, even though, personally, I have

11:04AM 1 doubts about the whole thing. But like I said before, for the
11:04AM 2 security of other people, if it did, in fact, happen and other
11:04AM 3 people were involved or other people were held hostage, it
11:04AM 4 would have been very good information for us.

11:04AM 5 Q. In fact, isn't it true that, based on the information Mr.
11:05AM 6 Roggio provided to you, in regards to the kidnapping and his
11:05AM 7 business dealings and the potential that he was overpaid or was
11:05AM 8 defrauding his business partners, that you could have, based on
11:05AM 9 that --

11:05AM 10 MR. BARTOLAI: Objection. Leading, Judge.

11:05AM 11 THE COURT: Sustained.

11:05AM 12 MR. HINKLEY: I'm sorry, what was the objection?

11:05AM 13 THE COURT: The objection was leading. Try it again,
11:05AM 14 please.

11:05AM 15 BY MR. HINKLEY:

11:05AM 16 Q. Could you have detained and looked at Mr. Roggio's
11:05AM 17 electronic devices, based on the information he provided you?

11:05AM 18 A. Yes.

11:05AM 19 MR. BARTOLAI: Well, just, I'd move to strike, Judge, the
11:05AM 20 answer. It's speculative. She indicated that she did not detain
11:05AM 21 them and she was not going to. So it's just speculative, at
11:05AM 22 this point, whether or not she could have.

11:05AM 23 THE COURT: I think many of your questions were posed in
11:05AM 24 the same fashion. Overruled.

11:06AM 25 MR. HINKLEY: Thank you, Your Honor. I have no further

11:06AM 1 questions. Thank you.

11:06AM 2 THE COURT: Anything else, Mr. Bartolai?

11:06AM 3 MR. BARTOLAI: Yes, Judge, just to follow up.

11:06AM 4 RE CROSS EXAMINATION

11:06AM 5 BY MR. BARTOLAI:

11:06AM 6 Q. Customs Border Protection did not detain his devices;

11:06AM 7 right?

11:06AM 8 A. Yes.

11:06AM 9 Q. And for one minute, if you thought they needed to be

11:06AM 10 detained, you would not have hesitated to detain them; is that

11:06AM 11 right?

11:06AM 12 A. Yes.

11:06AM 13 Q. And, in fact, that's what happened here -- well, strike

11:06AM 14 that. Regarding the secondary inspection, the reason why he was

11:06AM 15 referred for the secondary inspection was this CTR hit;

11:06AM 16 correct?

11:06AM 17 A. Yes.

11:06AM 18 Q. And that was because, as far as you know, was because he

11:06AM 19 was coming from Iraq?

11:06AM 20 A. Yes.

11:06AM 21 Q. If he had -- does your computer or the information that's

11:06AM 22 given to you at that time, does that tell you, at all, how many

11:06AM 23 times an individual had been in Iraq or in the past or any

11:06AM 24 other information, other than the fact that there's a lookout?

11:07AM 25 A. Could you repeat the question, please?

11:07AM 1 Q. In other words, when you got the information that there
11:07AM 2 was a CTR Lookout or hit on him, on Mr. Roggio that day, is any
11:07AM 3 other information provided relative to that?

11:07AM 4 A. No, that's it.

11:07AM 5 Q. It wouldn't tell you how many times an individual had been
11:07AM 6 to Iraq?

11:07AM 7 A. Not in that particular lookout, but I have the option to
11:07AM 8 look at past travel to the conflict zone.

11:07AM 9 Q. Okay, and do you recall if you did?

11:07AM 10 A. I don't remember --

11:07AM 11 Q. You don't remember?

11:07AM 12 A. -- if I did.

11:07AM 13 Q. Again, on that particular day, I know that you were part
11:07AM 14 of the Tactical Terrorism Response Team. If an individual, say,
11:07AM 15 was coming from the Bahamas, and they had a secondary
11:08AM 16 inspection, would you have also conducted that secondary
11:08AM 17 inspection?

11:08AM 18 A. No.

11:08AM 19 Q. Why wouldn't that be?

11:08AM 20 A. In that particular -- on that particular day? Because I
11:08AM 21 was part of the Tactical Terrorism Response Team, I was only
11:08AM 22 assigned to speak to people who, directly or indirectly,
11:08AM 23 traveled on that trip only from the conflict zone.

11:08AM 24 Q. That would have been another --

11:08AM 25 A. It would have been another secondary officer, like, the

11:08AM 1 regular type of secondary officer, if it needed to be
11:08AM 2 addressed.

11:08AM 3 MR. BARTOLAI: All right, that's it. Thank you.

11:08AM 4 THE COURT: Anything further?

11:08AM 5 MR. HINKLEY: No, Your Honor. Thank you.

11:08AM 6 THE COURT: Thank you, Ms. Morales. You can step down.

11:08AM 7 MR. HINKLEY: Your Honor, may the witness be dismissed? She
11:08AM 8 traveled in from Canada.

11:08AM 9 THE COURT: Any objection to her being excused?

11:08AM 10 MR. BARTOLAI: I'll tell you, Judge, we had subpoenaed Mrs.
11:08AM 11 Morales, as well, and now that her testimony is finished, she
11:09AM 12 can be excused.

11:09AM 13 THE COURT: Very well. You are excused.

11:09AM 14 THE WITNESS: Thank you.

11:09AM 15 MR. HINKLEY: The Government calls James Mundy, Your Honor.

11:09AM 16 THE COURT: Let's take 10 minutes for a break.

11:09AM 17 (At this time a brief recess was taken.)

11:09AM 18 THE COURT: Mr. Hinkley, call your witness.

11:23AM 19 MR. HINKLEY: James Mundy.

11:23AM 20 J A M E S M U N D Y IS CALLED, AND HAVING BEEN DULY
11:23AM 21 SWORN, TESTIFIED AS FOLLOWS:

11:23AM 22 THE CLERK: Would you please state and spell your name for
11:23AM 23 the record?

11:23AM 24 THE WITNESS: James Leo Mundy, M-U-N-D-Y.

11:23AM 25 THE CLERK: Thank you. You may be seated.

11:23AM 1 MR. HINKLEY: May I proceed, Your Honor?

11:23AM 2 THE COURT: Yes, you may.

11:23AM 3 DIRECT EXAMINATION

11:23AM 4 BY MR. HINKLEY:

11:23AM 5 Q. Mr. Mundy, how are you employed?

11:23AM 6 A. I'm a Special Agent with the United States Department of
11:23AM 7 Homeland Security, Homeland Security Investigations.

11:24AM 8 Q. How long have you been so employed?

11:24AM 9 A. Since August of 2007.

11:24AM 10 Q. What's your position?

11:24AM 11 A. Special Agent.

11:24AM 12 Q. How long have you been a Special Agent with them?

11:24AM 13 A. Coming up on 14 years.

11:24AM 14 Q. In February of 2017, obviously, you were a Special Agent
11:24AM 15 with HSI at that point?

11:24AM 16 A. Yes.

11:24AM 17 Q. Where was your duty station?

11:24AM 18 A. At that time, I was assigned to J.F.K. Airport, we have an
11:24AM 19 office there.

11:24AM 20 Q. What were your duties there?

11:24AM 21 A. On that day, I was assigned to be the general duty agent
11:24AM 22 for the entire office.

11:24AM 23 Q. This would be on the 26th of February 2017?

11:24AM 24 A. Yes.

11:24AM 25 Q. So what, exactly, does that mean? What would you be doing?

11:24AM 1 A. So as the general duty agent, everybody has to -- every
11:24AM 2 agent has to assume that position, probably, about every two
11:24AM 3 months, and you wear many hats that day, from answering phone
11:24AM 4 calls, to liaisioning for agents in other parts of the country
11:25AM 5 that need assistance, to signing for FedEx packages. There's
11:25AM 6 many jobs and responsibilities on the day of the duty agent.

11:25AM 7 Q. Obviously, you know why you're here testifying today, in
11:25AM 8 regards to Mr. Roggio.

11:25AM 9 A. I do.

11:25AM 10 Q. And were you involved in a secondary inspection that
11:25AM 11 involved Mr. Roggio?

11:25AM 12 A. I was.

11:25AM 13 Q. And what was your duty? What were you doing there?

11:25AM 14 A. I was contacted by Special Agent Burke from our
11:25AM 15 Philadelphia office and advised that a target of theirs was
11:25AM 16 going to be arriving at the airport, and my job was to meet
11:25AM 17 with CBP, Customs and Border Protection, and liaison between
11:25AM 18 the agent in Philadelphia, Agent Burke, and CBP.

11:25AM 19 Q. Did you do so?

11:25AM 20 A. I did.

11:25AM 21 Q. Describe to the Court what you did.

11:25AM 22 A. Essentially, I was present at J.F.K. Airport when the
11:26AM 23 Defendant arrived, and, really, I did nothing, but CBP
11:26AM 24 performed their normal job function, and I was present, and
11:26AM 25 they detained the electronic devices, I took custody of them

11:26AM 1 and sent them to Agent Burke for forensic examination.

11:26AM 2 Q. So let me ask you a few more detailed questions. How were
11:26AM 3 you dressed that day, if you recall?

11:26AM 4 A. If I was general duty agent, I would have been in a suit
11:26AM 5 and tie or a sport coat and slacks, button down. I can't recall
11:26AM 6 exactly how I dressed that day.

11:26AM 7 Q. Now, when you say you can't recall, it's a number of years
11:26AM 8 ago this occurred, is that correct?

11:26AM 9 A. Yes.

11:26AM 10 Q. And over the course of your career, I assume that you've
11:26AM 11 done this type of liaison work on a number of occasions?

11:27AM 12 A. Yes, it's a very common request.

11:27AM 13 Q. Was there anything about the inspection of Mr. Roggio on
11:27AM 14 that day that was unusual or made him memorable, in any way?

11:27AM 15 A. Not at all.

11:27AM 16 Q. Would you have been carrying a weapon on this particular
11:27AM 17 day?

11:27AM 18 A. Yes.

11:27AM 19 Q. Would you be carrying your weapon whenever you're on duty
11:27AM 20 at J.F.K., as you've described?

11:27AM 21 A. Yes.

11:27AM 22 Q. And would that weapon have been visible to the traveling
11:27AM 23 public?

11:27AM 24 A. No.

11:27AM 25 Q. Why is that?

11:27AM 1 A. In order to not cause alarm, you know, if I'm in plain
11:27AM 2 clothes at an airport with a firearm displayed, it could cause
11:27AM 3 alarm, so I keep it concealed.

11:27AM 4 Q. In your liaison work between Philadelphia and Agent Burke
11:28AM 5 and the CBP folks at J.F.K., did you have discussions with the
11:28AM 6 person who was assigned to interview Mr. Roggio, prior to Mr.
11:28AM 7 Roggio being interviewed, in regards to what type of questions
11:28AM 8 to ask or what areas to explore?

11:28AM 9 A. No.

11:28AM 10 Q. So why don't you just describe to the Court, basically,
11:28AM 11 what happened, as far as you can recollect?

11:28AM 12 A. As far as I can recall, you know, the subject was brought
11:28AM 13 into a secondary exam and, essentially, I linked up with the
11:28AM 14 agents from the Bureau, and CBP performed their normal routine
11:28AM 15 secondary examination, and the request from the Agent Burke was
11:29AM 16 to detain the electronic devices, in accordance with a border
11:29AM 17 search, which I did, and I FedEx'd them to Agent Burke.

11:29AM 18 Q. And when you were -- when you detained those electronics,
11:29AM 19 did you have a conversation with Mr. Roggio or would you have
11:29AM 20 had a conversation with Mr. Roggio, in regards to what that
11:29AM 21 means and what the process is?

11:29AM 22 A. I don't recall, specifically, having a conversation with
11:29AM 23 Mr. Roggio, but given that this is a common occurrence to
11:29AM 24 liaison, it would have been my practice to give the subject,
11:29AM 25 whether it be Mr. Roggio or somebody else, the contact

11:29AM 1 information for the agent from the originating office. As you
11:29AM 2 may imagine, J.F.K. is a very busy airport and office for us,
11:29AM 3 we have a lot of requests, so I would often guide the
11:29AM 4 passengers to the agent that's handling the request, in this
11:30AM 5 case, Agent Burke.

11:30AM 6 Q. I take it from the tone of your testimony that this is not
11:30AM 7 an unusual occurrence that you get requested to detain
11:30AM 8 electronics?

11:30AM 9 MR. BARTOLAI: Objection; leading.

11:30AM 10 THE COURT: It's a little early, but since it has been
11:30AM 11 made, do you want to reform your question?

11:30AM 12 MR. HINKLEY: Certainly, Your Honor.

11:30AM 13 BY MR. HINKLEY:

11:30AM 14 Q. Well, is it unusual for you to be involved in these type
11:30AM 15 of situations where other agents within your agency ask you to
11:30AM 16 liaison and to detain electronics from travelers?

11:30AM 17 A. Not at all, it's a very common occurrence and request.

11:30AM 18 Q. Is it the general practice that, once the items are
11:30AM 19 detained, you then send them on to the investigating officer or
11:30AM 20 agent?

11:30AM 21 A. That is correct, yes.

11:31AM 22 Q. Okay. So you don't really get involved in the
11:31AM 23 investigation; is that correct?

11:31AM 24 A. Correct.

11:31AM 25 Q. In front of you, there are a number of documents, I'll ask

11:31AM 1 you to look through there, there should be a Government's
11:31AM 2 Exhibit No. 2.

11:31AM 3 A. I have it here.

11:31AM 4 Q. Could you take a look and identify what it is?

11:31AM 5 A. It is a chain of custody, commonly known as DHS Form
11:31AM 6 6051-D, D standing for Detained, and it was filled out on
11:31AM 7 February 26, 2017 by myself, and that is my signature.

11:31AM 8 Q. Would this be the Detention Notice and Custody Receipt for
11:31AM 9 the property that was detained from Mr. Roggio?

11:31AM 10 A. It would be, yes.

11:31AM 11 MR. HINKLEY: Your Honor, I'm going to move for admission
11:31AM 12 of Government's Exhibit No. 2.

11:31AM 13 MR. BARTOLAI: No objection.

11:31AM 14 THE COURT: Government's 2 is admitted.

11:31AM 15 (At this time Government's Exhibit No. 2 was admitted into
11:32AM 16 evidence.)

11:32AM 17 BY MR. HINKLEY:

11:32AM 18 Q. The information that you put on this document -- well, let
11:32AM 19 me ask you this. Are you the one that filled out this document?

11:32AM 20 A. I am.

11:32AM 21 Q. And the information you provided in this document, did you
11:32AM 22 also provide that to Mr. Roggio?

11:32AM 23 A. It would have been my practice to have provided a copy to
11:32AM 24 the passenger, yes.

11:32AM 25 Q. I'd note in the remarks in box no. 13, you indicate,

11:32AM 1 Password for all devices, and then you indicate what those
11:32AM 2 passwords are.

11:32AM 3 If you recall, do you know from whom you received the
11:32AM 4 passwords?

11:32AM 5 A. I do not recall. I don't recall.

11:32AM 6 Q. Okay.

11:33AM 7 MR. HINKLEY: No further questions, Your Honor.

11:33AM 8 THE COURT: Cross-examine.

11:33AM 9 MR. BARTOLAI: Thank you.

11:33AM 10 CROSS EXAMINATION

11:33AM 11 BY MR. BARTOLAI:

11:33AM 12 Q. Good morning, Agent. You were present earlier, you know
11:33AM 13 that I'm the attorney for Mr. Roggio. I'm going to ask
11:33AM 14 you -- Government's Exhibit 2, you just testified about that,
11:33AM 15 and that's in front of you; correct?

11:33AM 16 A. It is in front of me, yes.

11:33AM 17 Q. And this is the Detention Notice and Custody Receipt for
11:33AM 18 the detained property; right?

11:33AM 19 A. Correct.

11:33AM 20 Q. And it says, Block A, Time 2000 hours. Is that it?

11:33AM 21 A. That's what's listed, yes.

11:33AM 22 Q. So that would have been, in laymen's terms, around 8 p.m.?

11:33AM 23 A. Yes.

11:33AM 24 Q. And that would have been at the beginning or actually
11:33AM 25 prior to the secondary interview inspection; correct?

11:34AM 1 A. No.

11:34AM 2 Q. That would have occurred after the secondary inspection?

11:34AM 3 A. Yes.

11:34AM 4 Q. Okay. So you were the person who detained the devices?

11:34AM 5 A. Yes.

11:34AM 6 Q. Okay. You're the person who completed this form; right?

11:34AM 7 A. I am.

11:34AM 8 Q. And you were directed by Agent Homeland Security Officer

11:34AM 9 or Investigative Officer Agent Burke to detain the devices?

11:34AM 10 A. Yes.

11:34AM 11 Q. All right. When do you recall him directing you to do so?

11:34AM 12 A. I don't have a specific date, but I would imagine it would

11:34AM 13 have been in the day or so leading up to this point, this date.

11:34AM 14 Q. Do you recall -- did you have a conversation with Agent

11:34AM 15 Burke?

11:34AM 16 A. I'm sure I did, I don't recall it.

11:34AM 17 Q. You don't recall having it.

11:34AM 18 A. A conversation?

11:34AM 19 Q. Yeah, I mean, do you recall speaking with him, either, in

11:35AM 20 person or on the telephone?

11:35AM 21 A. I don't recall, but it would be my practice to have had

11:35AM 22 established communication with the agent.

11:35AM 23 Q. Do you have any writing or memorandum of a conversation

11:35AM 24 that you had with Agent Burke?

11:35AM 25 A. I do not.

11:35AM 1 Q. But you're clear it was Agent Burke who directed you to
11:35AM 2 detain these devices; correct?

11:35AM 3 A. It was his request to have this secondary examination and
11:35AM 4 to have the devices detained, yes.

11:35AM 5 Q. Okay. You say that that's not -- the detention of
11:35AM 6 electronic devices, under these circumstances, are a very
11:35AM 7 common occurrence?

11:35AM 8 A. It's common.

11:35AM 9 Q. It's common for an agent to request that electronic
11:35AM 10 devices be detained, and you, as the liaison officer would
11:36AM 11 detain them?

11:36AM 12 A. It is.

11:36AM 13 Q. You, yourself, did not inspect these devices, in any way;
11:36AM 14 right?

11:36AM 15 A. By visually inspecting them and placing them in a bag and
11:36AM 16 then sending them in a FedEx -- if that's -- what's your
11:36AM 17 definition of inspect?

11:36AM 18 Q. All right, let's talk about visually inspecting them. Did
11:36AM 19 you look at them like -- did you look and make sure they were
11:36AM 20 electronic devices and something not other than that?

11:36AM 21 A. I'm sure I would have, yes.

11:36AM 22 Q. You don't recall, specifically, though, is that right?

11:36AM 23 A. I don't, but with this document, I can see that I have
11:36AM 24 listed them as electronic devices.

11:36AM 25 Q. Okay. In other words, sometimes, an electronic device

11:36AM 1 could have a false compartment in it; correct?

11:36AM 2 A. Not to my knowledge.

11:36AM 3 Q. You've never seen a false compartment in an electronic
11:36AM 4 device?

11:36AM 5 A. Not that I can recall at this time.

11:37AM 6 Q. Okay. Have you ever had occasions where people were trying
11:37AM 7 to smuggle contraband, we'll say, in an electronic device, such
11:37AM 8 as, a phone, a laptop, a game station, like, a Playstation or
11:37AM 9 anything like that?

11:37AM 10 A. Not that I can recall right now, but I'm sure -- I would
11:37AM 11 imagine it occurs.

11:37AM 12 Q. You did not have any occasion, in this particular case, to
11:37AM 13 manipulate these devices, like, take out the batteries or look
11:37AM 14 inside them, in any way?

11:37AM 15 A. Not that I recall, no.

11:37AM 16 Q. And, in fact, you had asked Mr. Roggio to provide the
11:37AM 17 passcodes for these devices?

11:37AM 18 A. I don't recall how the passcodes were obtained.

11:37AM 19 Q. Okay, but I know Government's Exhibit 2, the Detention
11:37AM 20 Notice and Custody Receipt for the detained property, block 13,
11:38AM 21 does indicate that the password for the devices was -- and it
11:38AM 22 sets forth there; right?

11:38AM 23 A. That's what's listed there.

11:38AM 24 Q. You completed this form?

11:38AM 25 A. I did.

11:38AM 1 Q. Where did you get that information?

11:38AM 2 A. I don't recall.

11:38AM 3 Q. Do you recall -- again, have you ever searched electronic
11:38AM 4 devices, in your capacity, under these circumstances, as a
11:38AM 5 liaison with the Customs Border Protection, in a secondary
11:38AM 6 interview inspection?

11:38AM 7 A. As far as inspecting them, I've never -- as far as a
11:38AM 8 forensic examination?

11:38AM 9 Q. No, no, just an inspection.

11:38AM 10 A. Just a physical and visual inspection, sure, yes.

11:38AM 11 Q. Okay. You don't recall doing that here. Do you
11:38AM 12 recall -- have you ever opened a device to look at it? Have you
11:38AM 13 ever used a passcode to open -- you know, turn the device on
11:38AM 14 and look at the contents?

11:39AM 15 A. In acting as a liaison in this similar instance?

11:39AM 16 Q. Yes.

11:39AM 17 A. Not that I recall.

11:39AM 18 Q. And you did not do that here; is that right?

11:39AM 19 A. Not that I recall.

11:39AM 20 Q. This particular day, February 26, 2017, you were on duty
11:39AM 21 that whole day; is that right?

11:39AM 22 A. Yeah, the duty responsibility is a 24-hour period.

11:39AM 23 Q. So you were there all day?

11:39AM 24 A. I would have been there for a block -- a period of those
11:39AM 25 24 hours, but I'm on call for that 24-hour period.

11:39AM 1 Q. When you're on call in that particular role you had that
11:39AM 2 day, it's pretty much anything; correct?

11:39AM 3 A. Yes.

11:39AM 4 Q. You said, answering the phone, secondary inspection,
11:39AM 5 whatever is required?

11:39AM 6 A. Yes, during the normal course of the business day, you are
11:40AM 7 -- unless there is some sort of request from a -- from another
11:40AM 8 agency or from another agent, I would be in the office at the
11:40AM 9 front desk, answering calls, signing for FedEx packages and
11:40AM 10 planning my day around requests that we received, in which
11:40AM 11 J.F.K. receives many.

11:40AM 12 Q. During this same question, February 26, 2017, you were
11:40AM 13 called to be present at this secondary inspection?

11:40AM 14 A. Yes.

11:40AM 15 Q. And to detain these devices?

11:40AM 16 A. Yes.

11:40AM 17 Q. Do you recall anything -- speaking or having any
11:40AM 18 interaction with Customs Border Protection Agent Morales who
11:40AM 19 previously testified?

11:40AM 20 A. I do not recall, no.

11:40AM 21 Q. Do you recall participating in any of the questions asked
11:41AM 22 by Agent Morales of Mr. Roggio?

11:41AM 23 A. I don't recall.

11:41AM 24 Q. Does anything about the interview with Mr. Roggio -- are
11:41AM 25 you able to recall any of the specifics of the interview with

11:41AM 1 Mr. Roggio that day?

11:41AM 2 A. No.

11:41AM 3 Q. Are you familiar with what is a CTR Lookout?

11:41AM 4 A. I'm familiar with -- no, not by its definition, no.

11:41AM 5 Q. Or anything like a one-day hit, does that ring a bell to
11:41AM 6 you, at all?

11:42AM 7 A. I've heard of it, sure.

11:42AM 8 Q. What?

11:42AM 9 A. I've heard of that, yes.

11:42AM 10 Q. Does it mean anything? What does it mean to you?

11:42AM 11 A. You know, that's CBP terminology -- phrase, I've heard it
11:42AM 12 used, and I believe, you know, in terms of the sense of a
11:42AM 13 one-day -- it's the person -- actually, do you know what? I
11:42AM 14 can't factually testify to exactly what it means.

11:42AM 15 Q. I appreciate that. So you've been a Homeland Security
11:42AM 16 Agent for, approximately, 15 years?

11:42AM 17 A. August will be 14 years.

11:42AM 18 Q. Fourteen years, all right. And as part of your job, you're
11:42AM 19 required to undergo training and updating, is that right, is
11:43AM 20 training a part of that, continuing training?

11:43AM 21 A. Periodic training, sure.

11:43AM 22 Q. Periodic training. All right, I'm going to show you --

11:43AM 23 MR. BARTOLAI: If I may, I have these exhibits, Defendant's
11:43AM 24 Exhibits E, F -- no, D, E and F that I'd ask the Court if I can
11:43AM 25 show to Mr. --

11:43AM 1 THE COURT: Sure. You may.

11:43AM 2 BY MR. BARTOLAI:

11:43AM 3 Q. Just take a minute and look at them. I'm not going to ask
11:43AM 4 you anything in depth about those, but I want to see if you're
11:43AM 5 able to identify them or if you've ever seen these documents
11:43AM 6 before.

11:43AM 7 A. I have never seen this document before.

11:43AM 8 Q. All right. So as part of your training, are you instructed
11:43AM 9 as to what is permissible regarding border searches and the
11:44AM 10 border search document?

11:44AM 11 A. Yes.

11:44AM 12 Q. Is that -- you're trained regularly on that?

11:44AM 13 A. No, I would say it's more, you know in the academy.

11:44AM 14 Q. Pardon me?

11:44AM 15 A. During the academy phase.

11:44AM 16 Q. Oh, during the academy, okay. You're not required to
11:44AM 17 undergo any type of continuing training on such topics?

11:44AM 18 A. Not that I recall.

11:44AM 19 MR. BARTOLAI: May I have a moment, Judge?

11:44AM 20 THE COURT: Yes.

11:44AM 21 MR. BARTOLAI: Nothing further.

11:44AM 22 THE COURT: Redirect?

11:44AM 23 MR. HINKLEY: No questions, Your Honor.

11:44AM 24 THE COURT: Thank you, Agent Mundy. You can step down.

11:45AM 25 MR. HINKLEY: Your Honor, can the witness be excused? I

11:45AM 1 don't think he's required anymore.

11:45AM 2 MR. BARTOLAI: Your Honor, we also subpoenaed him, as well,
11:45AM 3 and we're agreeable that he should be excused.

11:45AM 4 THE COURT: Very well. Agent Mundy, you are excused.

11:45AM 5 THE WITNESS: Thank you.

11:45AM 6 THE COURT: Mr. Hinkley, do you have another witness?

11:45AM 7 MR. HINKLEY: I do, Your Honor. The Government calls
11:45AM 8 Jeffrey Burke, Your Honor.

11:45AM 9 J E F F B U R K E IS CALLED, AND HAVING BEEN DULY SWORN,
11:45AM 10 TESTIFIED AS FOLLOWS:

11:46AM 11 THE CLERK: Would you please state and spell your name for
11:46AM 12 the record.

11:46AM 13 THE WITNESS: It's Jeff Burke, J-E-F-F, B-U-R-K-E.

11:46AM 14 THE CLERK: Thank you. You may be seated.

11:46AM 15 MR. HINKLEY: May I proceed, Your Honor?

11:46AM 16 THE COURT: Yes, you may.

11:46AM 17 DIRECT EXAMINATION

11:46AM 18 BY MR. HINKLEY:

11:46AM 19 Q. Mr. Burke, how are you employed, sir?

11:46AM 20 A. I'm currently employed as a Special Agent with Homeland
11:46AM 21 Security Investigations out of Philadelphia.

11:46AM 22 Q. How long have you been a Special Agent with that agency?

11:46AM 23 A. I am also going on my 14th year.

11:46AM 24 Q. Were you or are you involved in the investigation into Mr.
11:46AM 25 Ross Roggio?

11:46AM 1 A. Yes, I am.

11:46AM 2 Q. As part of your investigation, did you know that Mr.

11:47AM 3 Roggio was traveling internationally and the subject of today's

11:47AM 4 proceedings, did you seek to find out when he would be

11:47AM 5 returning to the United States?

11:47AM 6 A. Yes.

11:47AM 7 Q. All right. Let me go back a little bit. What agencies are

11:47AM 8 involved in this investigation?

11:47AM 9 A. Agencies involved include Homeland Security

11:47AM 10 Investigations, Federal Bureau of Investigation and the

11:47AM 11 Department of Commerce Office of Export Enforcement Bureau of

11:47AM 12 Industry Security.

11:47AM 13 Q. And as part of preparation for today, as well as just a

11:48AM 14 part of being a case agent in this matter, have you reviewed

11:48AM 15 documents prepared by the other agents and agencies and, also,

11:48AM 16 talked to the other agents, in regards to the investigation

11:48AM 17 into Mr. Roggio?

11:48AM 18 A. Yes, I have.

11:48AM 19 Q. Were you part of the investigation from the beginning or

11:48AM 20 did you come in at some point after it already started?

11:48AM 21 A. I came in at some point after it had already begun.

11:48AM 22 Q. Okay. There's been some testimony today that there was a

11:48AM 23 CTR Lookout for Mr. Roggio that the Government knew that he was

11:48AM 24 traveling and where a secondary inspection was requested of Mr.

11:48AM 25 Roggio.

11:48AM 1 Can you explain to the Court what your part in that was
11:48AM 2 and what all that means?

11:48AM 3 A. Sure. With this investigation, as with any investigation
11:49AM 4 that I open, I enter in subject records to an automated case
11:49AM 5 system. The subject records include -- in this case would have
11:49AM 6 been Mr. Roggio, his company, and other various subjects and
11:49AM 7 names of individuals that were part of or coming up in the
11:49AM 8 investigation.

11:49AM 9 Within those subject records, I have the option to
11:49AM 10 designate them for a referral to Customs, a referral to
11:49AM 11 Immigration or as a Silent Hit, so that if they are traveling,
11:49AM 12 I get to see that and nobody else does. It kind of allows me to
11:49AM 13 understand, you know, what the pattern of travel is, if they
11:49AM 14 are coming in, and in Mr. Roggio's case, he was coming in from
11:49AM 15 Iraq. It would provide us the opportunity to conduct a border
11:50AM 16 search of Mr. Roggio.

11:50AM 17 And in this case, in particular, I believe, it was January
11:50AM 18 25, I received both notices from my automated lookout that he
11:50AM 19 was traveling back to the U.S. from Iraq, and I was also
11:50AM 20 notified by the FBI of the travel, as well.

11:50AM 21 Q. Having received that information, what, if anything, did
11:50AM 22 you do?

11:50AM 23 A. I'm sorry, what was that?

11:50AM 24 Q. Having received that information, did you do anything?

11:50AM 25 A. So leading up to when I became involved in the case, I

11:50AM 1 believe, we had a case coordination meeting, it may have been
11:50AM 2 early January, where we all sat down and were kind of, Hey,
11:51AM 3 here's what we're looking at, what can we do, in an
11:51AM 4 investigative fashion, moving forward?

11:51AM 5 At that point, I had discussed our border search
11:51AM 6 authorities, as an HSI Special Agent designated as a customs
11:51AM 7 official, CBP officers and HSI agents are designated as customs
11:51AM 8 officials and permitted to conduct border search authority and
11:51AM 9 given border search authorities.

11:51AM 10 Upon receiving that information, Mr. Roggio was planning
11:51AM 11 to fly back, I consulted, first, with my supervisor to advise
11:51AM 12 him of my intent to request a border search and detention of
11:51AM 13 electronic devices, when Mr. Roggio crossed the border,
11:51AM 14 returning to the U.S. at J.F.K. International Airport.

11:51AM 15 I was given the go-ahead, it's more of an informal thing,
11:51AM 16 it's not a formal policy, and then consulted with the
11:52AM 17 investigative team to make sure that everybody was good with
11:52AM 18 us, you know, conducting this. I coordinated with my FBI case
11:52AM 19 agent, Department of Commerce case agents, and from there, made
11:52AM 20 arrangements with CBP and J.F.K. and HSI and J.F.K. to make
11:52AM 21 sure that Mr. Roggio was secondaried, is the term we use.

11:52AM 22 The one-day lookout, you know, I can shed some light on
11:52AM 23 that, as well. The one-day lookout is something that HSI agents
11:52AM 24 or CBP officers can, basically, tag a traveler to, basically,
11:52AM 25 to make sure that they're not missed, because it happens, it

11:52AM 1 happens very frequently, where a secondary request could be
11:53AM 2 made and it just -- it's missed.

11:53AM 3 The one-day lookout is just, kind of, an extra, Hey,
11:53AM 4 listen, we know this individual is traveling, we have confirmed
11:53AM 5 that they've boarded the plane, and we get that information
11:53AM 6 from international carriers who are flying to the U.S., as a
11:53AM 7 normal course of business, they have to send an advance
11:53AM 8 manifest electronically to Customs and Border Protection, which
11:53AM 9 is uploaded into their system, and it gives Customs and Border
11:53AM 10 Protection the opportunity to, essentially, do a data check on
11:53AM 11 incoming travelers.

11:53AM 12 Are there fugitives? Are there anyone with criminal
11:53AM 13 histories that need to be further examined? Potential issues
11:53AM 14 from other countries. Interpol red flag notices, there's an
11:53AM 15 entire list of terrorists, the list goes on and on. So we went
11:54AM 16 forward with having the secondary exam conducted.

11:54AM 17 Q. So I take it from your testimony, then, that there was an
11:54AM 18 ongoing investigation into Mr. Roggio, prior to being alerted
11:54AM 19 that he was traveling internationally, coming back to the
11:54AM 20 United States; is that correct?

11:54AM 21 A. Absolutely. And I had reviewed the investigative findings
11:54AM 22 from the FBI and commerce, as well, leading up to that, so I
11:54AM 23 was up to speed on what the allegations were against Mr.
11:54AM 24 Roggio.

11:54AM 25 Q. Were part of the allegations or the investigation into

11:54AM 1 export violations?

11:54AM 2 A. Yes, they were.

11:54AM 3 Q. Export violations would be something that would be within
11:54AM 4 the authority of HSI, as well as Customs Border Patrol, to
11:55AM 5 investigate; is that correct?

11:55AM 6 A. Absolutely. And, specifically, my assignment was to the
11:55AM 7 Counter Proliferations Unit, who were responsible for
11:55AM 8 investigating attempts to import or export controlled items,
11:55AM 9 either, on the Commerce Control list or on the Department of
11:55AM 10 State United States Munitions list.

11:55AM 11 Q. So in front of you, you will, I believe, find a document
11:55AM 12 marked as Government's Exhibit No. 5.

11:55AM 13 A. Yes, I have it.

11:55AM 14 Q. What is Government's Exhibit No. 5?

11:55AM 15 A. Exhibit No. 5 is the application and affidavit in support
11:55AM 16 of that application for a search warrant for the electronic
11:55AM 17 devices that had been detained for Mr. Roggio and his travel
11:56AM 18 companion.

11:56AM 19 Q. Are you the Affiant on this particular search warrant?

11:56AM 20 A. I am not, the affidavit is mine, but since we were trying
11:56AM 21 to do this as expeditiously as possible, I was traveling for
11:56AM 22 business, and I had an another agent within the Counter
11:56AM 23 Proliferations Group drive up to Scranton to swear the warrant
11:56AM 24 out.

11:56AM 25 Q. So you were part of the preparation of the affidavit; is

11:56AM 1 that correct?

11:56AM 2 A. Outside of the opening paragraphs by Agent Hertzog, the
11:56AM 3 entire affidavit -- well, I shouldn't say -- the affidavit is
11:56AM 4 made up of probable cause from a Commerce Affidavit, and then
11:56AM 5 contains additional findings from the investigation.

11:56AM 6 Q. I take it that the Affiant was familiar with the
11:57AM 7 investigation and, also, spoke to you about the investigation
11:57AM 8 and reviewed the affidavit, prior to his signing for the
11:57AM 9 subpoena -- excuse me -- for the search warrant; is that
11:57AM 10 correct?

11:57AM 11 A. Yes, that is correct.

11:57AM 12 Q. So what I'd like to do is go through the affidavit with
11:57AM 13 you, kind of, paragraph by paragraph, in order to, kind of,
11:57AM 14 establish where the investigation was, up to the point where
11:57AM 15 you learned Mr. Roggio was returning to the United States.

11:57AM 16 A. Okay.

11:57AM 17 Q. And in that effort, I guess, we will start
11:57AM 18 at -- on -- it's not paged, but on Paragraph 17 of the
11:57AM 19 affidavit.

11:57AM 20 A. Very good.

11:57AM 21 Q. So maybe even to make this a little bit simpler, why don't
11:58AM 22 you give a narrative to the Court, basically, how the
11:58AM 23 investigation developed and what facts were known to the
11:58AM 24 investigative team, as it went forward, from where it first
11:58AM 25 started.

11:58AM 1 A. Very good. In March of 2016, a representative employee
11:58AM 2 from the Drill Masters Eldorado Tool Company contacted the FBI,
11:58AM 3 in regards to suspicions that controlled items were being
11:58AM 4 exported to Iraq, specifically, machinery bits, tools, to
11:58AM 5 manufacture firearms.

11:58AM 6 From that, FBI conducted several interviews to confirm
11:58AM 7 this, obtained documents and brought in the Department of
11:59AM 8 Commerce to further investigate.

11:59AM 9 As they reviewed documents obtained by Eldorado Tool
11:59AM 10 Company, they confirmed that there were certain tools that
11:59AM 11 appear to have been shipped through a private shipping company
11:59AM 12 in East Stroudsburg, The Packaging Place, I believe, the name
11:59AM 13 of it is, Special Agent from Commerce ran licensing checks to
11:59AM 14 see if a license had been obtained or approvals had been
11:59AM 15 obtained from the Department of Commerce to ship those items
11:59AM 16 because they had found that they were, indeed, controlled items
11:59AM 17 that were not allowed to be exported from the U.S. to Iraq
11:59AM 18 without specific licensing and authorizations.

11:59AM 19 When it was determined that no licensing had been found,
11:59AM 20 search warrants were obtained for various email addresses for
12:00PM 21 Mr. Roggio. If I'm recalling the fact pattern correctly, Mr.
12:00PM 22 Roggio was having his former wife ship these items to him in
12:00PM 23 Iraq, and, I guess, when the Eldorado Tool Company employee had
12:00PM 24 received a phone call from The Packaging Place asking for an
12:00PM 25 official description of the items, and that's what kind of

12:00PM 1 tipped off the employee that these controlled items were being
12:00PM 2 exported.

12:00PM 3 Further investigation confirmed that, yes, they were
12:00PM 4 exported via mail by The Packaging Place, and additional
12:00PM 5 documents were obtained from the package place, from the
12:00PM 6 shipper, as well, and, you know, all that went towards the
12:00PM 7 probable cause of the search warrants that were obtained by the
12:01PM 8 Commerce Special Agent in the investigation. I believe there
12:01PM 9 were two email search warrants that they applied for and
12:01PM 10 received.

12:01PM 11 Q. Would the search warrants for those emails be email
12:01PM 12 accounts controlled by the Defendant Mr. Roggio?

12:01PM 13 A. Yes, based on the probable cause I reviewed, both were
12:01PM 14 submitted on various forms of paperwork, in conjunction with
12:01PM 15 the exportation of these items, either, the ordering of them
12:01PM 16 from Eldorado Tool Company, but, also, on the process of
12:01PM 17 exporting the items out of the country.

12:01PM 18 Q. Now, before you, in addition to Government's Exhibit No.
12:01PM 19 5, there's a Government's Exhibit No. 3 and 4. Would you take a
12:01PM 20 quick look at those?

12:02PM 21 A. I have number 3 in front of me.

12:02PM 22 Q. Would you identify what No. 3 is, please?

12:02PM 23 A. This is the Search Warrant Application and Affidavit by
12:02PM 24 Special Agent Scott Dunberg of U.S. Department of Commerce for
12:02PM 25 the yahoo email account Rwroggio, R-0-G-G-I-0, @yahoo.com.

12:02PM 1 Q. How about Government's Exhibit No. 4?

12:02PM 2 A. No. 4 is the Application and Affidavit Search Warrant
12:02PM 3 applied for and received by Special Agent Scott Dunberg, U.S.
12:02PM 4 Department of Commerce, for the yahoo email account Roggio,
12:03PM 5 R-O-G-G-I-O, @yahoo.com.

12:03PM 6 MR. HINKLEY: Your Honor, these are documents that were
12:03PM 7 docketed with the Court, as indicated, but for purposes of
12:03PM 8 today's proceedings, I am moving for admission of 3, 4 and 5.

12:03PM 9 MR. BARTOLAI: No objection.

12:03PM 10 THE COURT: Government's 3, 4 and 5 are admitted.

12:03PM 11 (At this time Government's Exhibit Nos. 3-5 were admitted
12:03PM 12 into evidence.)

12:03PM 13 BY MR. HINKLEY:

12:03PM 14 Q. If we can go back to 17, Paragraph 17 in Government's
12:03PM 15 Exhibit No. 5, I want to, kind of, walk you through the
12:03PM 16 affidavit.

12:03PM 17 First of all, these facts that were included here, they
12:03PM 18 were the facts known by the investigation, prior to Mr.
12:03PM 19 Roggio's equipment being detained at the border, is that
12:03PM 20 correct?

12:03PM 21 A. Correct.

12:03PM 22 Q. And Paragraph 17, doesn't that, kind of, just describe how
12:04PM 23 the investigation was kicked off with the tip from the Drill
12:04PM 24 Masters Eldorado Tool people?

12:04PM 25 A. Yes.

12:04PM 1 Q. And if I can ask you to take a look at Government's
12:04PM 2 Exhibit No. 6?

12:04PM 3 A. I have it.

12:04PM 4 Q. Could you describe what Government's Exhibit No. 6 is?

12:04PM 5 A. Government's Exhibit No. 6 is an invoice under Sales Order
12:04PM 6 No. 0160983 for Drill Masters Eldorado Tool, Incorporated,
12:04PM 7 identifying the customer as Ross Roggio 116 Turkey Hill Road,
12:05PM 8 Stroudsburg, Pennsylvania, zip code 18360, and it's a
12:05PM 9 multi-page document, document being purchase orders obtained by
12:05PM 10 Mr. Roggio.

12:05PM 11 Q. Would this be the equipment that was the subject of the
12:05PM 12 tip that these items were being trans-shipped from Drill
12:05PM 13 Masters to somewhere in the Middle District of Pennsylvania and
12:05PM 14 then on to Iraq?

12:05PM 15 A. Yes.

12:05PM 16 Q. Okay. And this is, again, things that were known by the
12:05PM 17 investigation, prior to Mr. Roggio's return?

12:05PM 18 A. Yes, there was a number of items that he had ordered, I
12:05PM 19 don't believe every item is controlled, but the controlled
12:05PM 20 items are listed within these purchase orders.

12:05PM 21 MR. HINKLEY: Your Honor, the Government moves for
12:05PM 22 Government's Exhibit No. 6 to be admitted.

12:05PM 23 MR. BARTOLAI: No objection.

12:05PM 24 THE COURT: Government's 6 is admitted.

12:05PM 25 (At this time Government's Exhibit No. 6 was admitted into

12:06PM 1 evidence.)

12:06PM 2 BY MR. HINKLEY:

12:06PM 3 Q. Moving on to No. 18 and 19, Paragraphs 18 and 19 of the
12:06PM 4 Government's Exhibit No. 5.

12:06PM 5 Can you explain, kind of, how the investigation was
12:06PM 6 developing at that point?

12:06PM 7 A. In Paragraph 18, it's documenting the FBI's inclusion of
12:06PM 8 the Department of Commerce into the investigation, and in
12:06PM 9 Paragraph 19, it is documenting an FBI Special Agent interview
12:06PM 10 that was conducted telephonically with Mr. Roggio.

12:06PM 11 Q. You're familiar with that part of the investigation, are
12:06PM 12 you not?

12:06PM 13 A. Yes.

12:06PM 14 Q. So could you describe what that interview was about and
12:07PM 15 what the information gathered by the agents was?

12:07PM 16 A. The FBI agent was following up on the lead provided by
12:07PM 17 Eldorado Tool Company, and I believe, if I'm correct, had
12:07PM 18 traveled to Mr. Roggio's current address, where he initially
12:07PM 19 spoke with his former wife who called -- either called Mr.
12:07PM 20 Roggio or the FBI agent received a phone number and called Mr.
12:07PM 21 Roggio, himself.

12:07PM 22 During that conversation, he was asked if Mr. Roggio had
12:07PM 23 ordered these parts and if he had exported these parts to Iraq,
12:07PM 24 in violation of U.S. law. Mr. Roggio advised the agents that he
12:07PM 25 did remember ordering them but didn't remember where they were,

12:07PM 1 said they could be in a safe or other location within either
12:08PM 2 his primary residence or his parents' residence.

12:08PM 3 Q. Did the investigation follow up with conversations or
12:08PM 4 interviews with any people at Drill Masters Eldorado Tool?

12:08PM 5 A. Yes, it did.

12:08PM 6 Q. What is the gist of that part of the investigation?

12:08PM 7 A. The gist -- the employee at Eldorado Tool was able to
12:08PM 8 confirm the orders and also confirmed that specific tools,
12:08PM 9 essentially, drill bits -- let me get the specific name -- I
12:09PM 10 believe they're called, like, buttons, but, essentially,
12:09PM 11 they're used to drill out a barrel and impart the rifling
12:09PM 12 within the barrel for various calibers. And she confirmed that
12:09PM 13 the parts, indeed, are controlled and not supposed to be
12:09PM 14 exported without a license.

12:09PM 15 Q. Now, having received that information, did the
12:09PM 16 investigative agents then go to the place that was used to ship
12:09PM 17 these items?

12:09PM 18 A. Yes.

12:09PM 19 Q. And where is that located, if you know?

12:09PM 20 A. That is located at 18 Milford Road East Stroudsburg,
12:09PM 21 Pennsylvania.

12:09PM 22 Q. What's the name of that company, if you know?

12:09PM 23 A. The Packaging Place.

12:09PM 24 Q. Did members of the investigative team speak to anyone
12:10PM 25 there?

12:10PM 1 A. Yes, they spoke to the owner Frank Monteforte who was
12:10PM 2 interviewed by an FBI Special Agent, to which he also provided
12:10PM 3 paperwork and confirmed that items fitting the description of
12:10PM 4 these tools that are restricted, that he did recall having
12:10PM 5 exported those to Iraq to Mr. Roggio, indicated that his wife
12:10PM 6 had come in, brought them in, and, I believe, they documented
12:10PM 7 them as just various tools.

12:10PM 8 Q. I'm going to ask you to look at Government's Exhibit No.
12:10PM 9 7, please.

12:10PM 10 A. Yes.

12:10PM 11 Q. Could you identify what Government's Exhibit No. 7 is?

12:10PM 12 A. This is The Packaging Place invoice, indicating that
12:11PM 13 Kristy Roggio had signed to have these items shipped to Ross
12:11PM 14 Roggio to an address in the Baharan Residential Complex
12:11PM 15 Building 42, Office 10, Sulaymaniyah, Kurdistan Region of Iraq,
12:11PM 16 further identifying a phone number of 570-977-8102 to the
12:11PM 17 attention of Ross Roggio from Kristy L. Roggio at, I believe,
12:11PM 18 143 Indian Spring Drive, Stroudsburg, Pennsylvania. Declared a
12:11PM 19 value of \$800. And then it's a multi-page document which breaks
12:11PM 20 down, specifically, what the items were.

12:11PM 21 Q. Would this have been retrieved by the investigation from
12:12PM 22 The Packaging Place business?

12:12PM 23 A. Yes, yes, Mr. Monteforte provided this.

12:12PM 24 Q. Would this have been available to the investigation, prior
12:12PM 25 to Mr. Roggio's return to the United States on February 26 of

12:12PM 1 2017?

12:12PM 2 A. Yes, this is signed and dated February 6 of 2016.

12:12PM 3 MR. HINKLEY: The Government moves for admission of

12:12PM 4 Government's Exhibit No. 7.

12:12PM 5 MR. BARTOLAI: No objection.

12:12PM 6 THE COURT: Government's 7 is admitted.

12:12PM 7 (At this time Government's Exhibit No. 7 was admitted into
12:12PM 8 evidence.)

12:12PM 9 BY MR. HINKLEY:

12:12PM 10 Q. On Government's Exhibit No. 7, it appears that there's a
12:12PM 11 yahoo email account that is referenced on the first page.

12:12PM 12 A. Yes, in the lower box, it is designated as Rwroggio,
12:12PM 13 R-O-G-G-I-O, @yahoo.com.

12:12PM 14 Q. That would be one of the emails that, ultimately, a search
12:13PM 15 warrant was sought and granted for; is that correct?

12:13PM 16 A. Correct.

12:13PM 17 Q. So having gone to the shipping address and speaking to the
12:13PM 18 actual shipper for these items, what was the next step of the
12:13PM 19 investigation?

12:13PM 20 A. Next step was taking the information they had obtained,
12:13PM 21 the licensing determinations were requested and determined that
12:13PM 22 the rifling combo buttons, that's the term I was missing
12:13PM 23 earlier, the rifling combo buttons were, indeed, controlled
12:13PM 24 items and required a license to be exported from the U.S.

12:14PM 25 Q. Are they, in fact, controlled items?

12:14PM 1 A. Yes, they are.

12:14PM 2 Q. And was there a search done to determine whether or not
12:14PM 3 Mr. Roggio or his businesses or anyone associated with the
12:14PM 4 shipment of these items, whether they had been granted
12:14PM 5 permission or an exporter license to send these things?

12:14PM 6 A. Yes, Special Agent Scott Dunberg, prior to issuing the
12:14PM 7 search warrants, conducted these searches, requested these
12:14PM 8 searches, and on May 26, 2016, BIS, Bureau of Industry and
12:14PM 9 Security, issued a license determination stating that the
12:14PM 10 rifling combo buttons purchased by Roggio from Drill Masters
12:14PM 11 Eldorado Tools, Incorporated and believed to have been exported
12:14PM 12 to Iraq on or about March 30 of 2016 required an export license
12:15PM 13 from Bureau of Industry and Security, in order to be lawfully
12:15PM 14 exported from the United States to Iraq, from January 1, 2016
12:15PM 15 through May 19 of 2016.

12:15PM 16 Specifically, these rifling combo buttons fall under
12:15PM 17 Export Control, Commerce Control No. 2B018.E and are controlled
12:15PM 18 for export to Iraq for the following reasons:

12:15PM 19 National security, regional stability and United Nations
12:15PM 20 Embargo concerns.

12:15PM 21 A license history check was also performed on Mr. Roggio's
12:15PM 22 name, your sending identifiers, dates of birth, Social Security
12:15PM 23 numbers, addresses, anything associated with what would be
12:15PM 24 requested when filing for a license legally, and under all of
12:15PM 25 these search terms, no license was found.

12:16PM 1 Q. Was it, at this point, that search warrants were sought
12:16PM 2 for two email accounts associated with Mr. Roggio?

12:16PM 3 A. Yes, it appears in November of 2016.

12:16PM 4 Q. And, obviously, they're granted because they're exhibits
12:16PM 5 now. Were you able to review the fruits of those searches?

12:16PM 6 A. Yes, when I was asked to join the investigative team, it's
12:16PM 7 the first thing that I requested was to review all
12:16PM 8 investigative documents so I could bring myself up to speed on
12:16PM 9 the investigation that had been ongoing.

12:16PM 10 Q. I'm going to ask you to look at Government's Exhibit No.
12:16PM 11 8.

12:17PM 12 A. Okay.

12:17PM 13 Q. Could you identify what this document is?

12:17PM 14 A. This is a printout of an email from Ross Roggio using
12:17PM 15 email Rwroggio, R-O-G-G-I-O, @yahoo.com, to Alina Caddagia,
12:17PM 16 title -- or sent November 14th, 2015, has an attachment,
12:17PM 17 Weapons and Ammunition Feasibility Report No. 1, with the
12:17PM 18 request that Ms. Caddagia -- I'm sorry I'm butchering the name
12:17PM 19 -- ""Please print out and get to Biam. Thanks, Ross."

12:17PM 20 Q. And is this a document that was found as a result of
12:18PM 21 searching the email account Rwroggio@yahoo.com?

12:18PM 22 A. Yes.

12:18PM 23 MR. HINKLEY: Your Honor, the Government is moving for
12:18PM 24 admission of Government's Exhibit No. 8.

12:18PM 25 THE COURT: Any objection?

12:18PM 1 MR. BARTOLAI: No objection.

12:18PM 2 THE COURT: Government's 8 is admitted.

12:18PM 3 (At this time Government's Exhibit No. 8 was admitted into
12:18PM 4 evidence.)

12:18PM 5 BY MR. HINKLEY:

12:18PM 6 Q. You testified you reviewed, among other documents, this
12:18PM 7 document; is that correct?

12:18PM 8 A. Yes.

12:18PM 9 Q. How does this document fit into the investigation?

12:18PM 10 A. This document appears to be a Weapons and Ammunition
12:18PM 11 Feasibility Report created by Roggio Consulting Company, in
12:18PM 12 which it is outlining the steps, costs and analysis to develop
12:18PM 13 a weapons manufacturing facility, based on the internal
12:18PM 14 document statements in Iraq.

12:19PM 15 Q. Again, this is a document that Mr. Roggio, using that
12:19PM 16 email account, emailed to another individual; is that correct?

12:19PM 17 A. Correct.

12:19PM 18 Q. And found as a result of the search warrant on that email
12:19PM 19 account?

12:19PM 20 A. Correct.

12:19PM 21 Q. This information was gathered by the investigation, prior
12:19PM 22 to Mr. Roggio's travel on February 26 of '17?

12:19PM 23 A. Correct.

12:19PM 24 Q. I'm going to ask you to take a look at Government's No. 9
12:19PM 25 for identification purposes.

12:19PM 1 A. I have it.

12:19PM 2 Q. And could you describe what Government's No. 9 is?

12:20PM 3 A. This is an invoice, printout of an invoice dated March 28,
12:20PM 4 2016, Invoice No. 10523 from OML Global in Fayetteville, North
12:20PM 5 Carolina, listing a customer as Ross Roggio, Salesperson as
12:20PM 6 William Mathis, and an order for 15,000 gas rings, 3200 cotter
12:20PM 7 pins, firing pin retainers, and the gas rings are further
12:20PM 8 described as M4 bolt gas rings MIL.

12:20PM 9 Q. Is this document a document that was obtained through the
12:20PM 10 service of one or both of those search warrants you were
12:20PM 11 talking about, in regards to email accounts?

12:20PM 12 A. Yes, this document is sourced from the Rwroggio email
12:21PM 13 account, the Rwroggio@yahoo.com email account.

12:21PM 14 MR. HINKLEY: At this point, Your Honor, the Government
12:21PM 15 will move for admission of Government's Exhibit No. 9.

12:21PM 16 MR. BARTOLAI: No objection.

12:21PM 17 THE COURT: Government's Exhibit No. 9 is admitted.

12:21PM 18 (At this time Government's Exhibit No. 9 was admitted into
12:21PM 19 evidence.)

12:21PM 20 BY MR. HINKLEY:

12:21PM 21 Q. Again, is this a document that the investigation knew
12:21PM 22 about and reviewed prior to Mr. Roggio's travel on February 26
12:21PM 23 of 2017?

12:21PM 24 A. Yes.

12:21PM 25 Q. How does this document fit into the investigation,

12:21PM 1 generally?

12:21PM 2 A. This is a document that showed Mr. Roggio was obtaining
12:21PM 3 large quantities of materials that would be needed to develop
12:21PM 4 an M4 style, AR15 style assault rifle. These items,
12:21PM 5 specifically, would be integral to the development of the
12:22PM 6 firing pin retaining -- or, I'm sorry, the firing pin bolt
12:22PM 7 action within the rifle.

12:22PM 8 Q. So it would be incorporated into the production of
12:22PM 9 firearms?

12:22PM 10 A. Yes.

12:22PM 11 Q. Are these particular items, do you know whether or not
12:22PM 12 they are controlled?

12:22PM 13 A. They are. As part of my -- it's part of my job in Counter
12:22PM 14 Proliferations, we work hand in hand with Department of
12:22PM 15 Commerce, as well as with the Department of State. In this
12:22PM 16 case, these items were submitted -- a description of these
12:22PM 17 items were submitted, along with Mr. Roggio's names, you know,
12:22PM 18 variations of his names, companies, addresses, identifiers to
12:22PM 19 the Department of State, Defense Director of Trade Controls,
12:22PM 20 which controls licensing for the United States Munitions List
12:22PM 21 Items, and they were found to be controlled items, under the
12:22PM 22 United States Munitions List that would acquire licensing and
12:23PM 23 approvals to export from the United States.

12:23PM 24 Q. Now, during your investigation, is there any evidence that
12:23PM 25 you gathered or that was gathered by the investigative team

12:23PM 1 that Mr. Roggio is producing rifles during this time frame in
12:23PM 2 the United States?

12:23PM 3 A. At this time, no. Mr. Roggio appeared to or did own a
12:23PM 4 firearms manufacturing facility in Fayetteville, North Carolina
12:23PM 5 years before. That company went defunct, no longer existed. We
12:23PM 6 believe Mr. Roggio was also attempting to start a partnership
12:23PM 7 in the East Stroudsburg area, however, that partnership did not
12:23PM 8 move forward to manufacture firearms, as well.

12:24PM 9 So as of our investigation, Mr. Roggio was not
12:24PM 10 manufacturing firearms professionally in the United States.

12:24PM 11 Q. I'm going ask you to take a look at Government's Exhibit
12:24PM 12 10 for identification purposes.

12:24PM 13 A. Exhibit No. 10 is my Homeland Security Investigations
12:24PM 14 Report of Investigation documenting the February 26, 2017
12:24PM 15 HSI-directed Secondary Inspection and Border Search of Ross
12:24PM 16 Roggio and Christina Sidiropoulou at their arrival at J.F.K.
12:24PM 17 from Iraq.

12:24PM 18 Q. Let me ask you more specifically, with regards to your
12:24PM 19 request for secondary inspection. Do you recall speaking to
12:25PM 20 James Mundy, the previous witness, from HSI?

12:25PM 21 A. I'm sure we spoke over the phone, at some point. I would
12:25PM 22 have -- A, I think this was on a Sunday --

12:25PM 23 MR. BARTOLAI: Your Honor, I'm going to object. It's
12:25PM 24 speculative, it's speculation. He's not able to say that he
12:25PM 25 spoke to him.

12:25PM 1 THE WITNESS: I spoke to James Mundy on the phone, prior to
12:25PM 2 this --

12:25PM 3 THE COURT: Just a moment. What's your objection, Mr.
12:25PM 4 Bartolai?

12:25PM 5 MR. BARTOLAI: Your Honor, he said that he wasn't sure if
12:25PM 6 he had spoke to Mr. Mundy, you know, prior to the secondary
12:25PM 7 inspection, and I objected to it on the basis of speculation. I
12:25PM 8 think he's cleared that up since then, Judge.

12:25PM 9 THE COURT: I believe he has. Do you want to clarify the
12:25PM 10 state the record on this?

12:25PM 11 BY MR. HINKLEY:

12:25PM 12 Q. Do you recall whether or not you spoke to Mr. Mundy before
12:25PM 13 the secondary inspection of Mr. Roggio?

12:25PM 14 A. Yes, I would have.

12:25PM 15 Q. And did you advise Mr. Mundy of any particular questions
12:26PM 16 or areas of concern that you wished to have Mr. Roggio
12:26PM 17 interviewed about upon his arrival?

12:26PM 18 A. No, I would have given -- I gave Mr. Mundy an
12:26PM 19 overview -- a very general overview of what the case was and
12:26PM 20 what Mr. Roggio's part in that would be. As for specific
12:26PM 21 questioning, I would note what we did not want to do was ask
12:26PM 22 any specific questions that would have tipped Mr. Roggio off to
12:26PM 23 the fact that there was an ongoing investigation. We wanted
12:26PM 24 this to be as plain and ordinary as possible, you know, what
12:26PM 25 CBP would normally ask, that's what they would ask, you know, I

12:26PM 1 believe, the prior witness even described the kind of five W's,
12:27PM 2 Who, What, Where, When and Why's of the travel and their
12:27PM 3 activities in the country that they're coming from.

12:27PM 4 And that's -- we didn't tailor it, we didn't want to
12:27PM 5 tailor it, we did not want to tip Mr. Roggio off to the fact
12:27PM 6 that there was an ongoing investigation.

12:27PM 7 Now, we knew, at some point, he would become aware,
12:27PM 8 especially, when the devices were detained and he was provided
12:27PM 9 my information to follow up on to retrieve the devices, but for
12:27PM 10 the point of questioning, we just wanted the basics.

12:27PM 11 MR. HINKLEY: Your Honor, if I haven't already done so, I'm
12:27PM 12 moving for admission of Government's Exhibit No. 10.

12:27PM 13 THE COURT: You haven't moved yet. Any objection?

12:27PM 14 MR. BARTOLAI: No.

12:27PM 15 THE COURT: Government's Exhibit 10 is admitted.

12:27PM 16 (At this time Government's Exhibit No. 10 was admitted
12:27PM 17 into evidence.)

12:27PM 18 BY MR. HINKLEY:

12:28PM 19 Q. Once the items were detained by Mr. Mundy, what happened
12:28PM 20 to them at that point?

12:28PM 21 A. The items were packaged in a FedEx packaging, I provided
12:28PM 22 our -- the SAC Philadelphia office's funding code, so that
12:28PM 23 J.F.K. HSI wouldn't have to pay for the shipping, those items
12:28PM 24 were addressed to me and shipped down to the SAC Philadelphia
12:28PM 25 office, where I took custody of them.

12:28PM 1 Q. Once you received custody of these items, what happened at
12:28PM 2 that point?

12:28PM 3 A. At that point, I'm signing the custody form to show that I
12:28PM 4 received them, I'm returning a copy of that custody form to
12:28PM 5 Special Agent Mundy for his records, so he's aware that I did
12:28PM 6 receive them, and I am immediately turning those items over to
12:29PM 7 our computer forensics group, based on a request -- we fill out
12:29PM 8 an office request indicating what devices we have and what
12:29PM 9 we're looking to accomplish.

12:29PM 10 They were aware this was a border search detention, which
12:29PM 11 places -- you know, a little bit of -- you know, a fire
12:29PM 12 underneath them. They're extremely backlogged, it's the reason
12:29PM 13 the devices come down to Philadelphia and didn't remain up in
12:29PM 14 New York.

12:29PM 15 If New York was responsible for forensically evaluating
12:29PM 16 every item, they would never get them done in a timely fashion.
12:29PM 17 So the practice is is to have them sent to the requesting
12:29PM 18 office, that requesting office's forensics -- computer
12:29PM 19 forensics agents conduct the analysis, and once that report is
12:29PM 20 generated, it's something that I then can review.

12:30PM 21 We no longer -- to search a phone on-site, we, A, we don't
12:30PM 22 want to open the phone and manipulate it, in any way, because
12:30PM 23 we could change something on that phone, possibly, destroy
12:30PM 24 evidence, we don't want to do that.

12:30PM 25 In addition, to examine a phone on-site takes a large

12:30PM 1 amount of time, even with extraction tools, and we would, you
12:30PM 2 know -- people would miss their flights. So if we're doing a
12:30PM 3 full examination, those phones are being sent to the requesting
12:30PM 4 office and examined there, and, then, in a timely fashion, if
12:30PM 5 we are not going to keep those devices, we return them.

12:30PM 6 Basically, if we're satisfied that the image created from
12:30PM 7 the forensics analysis is full and complete, then, we will
12:31PM 8 return the electronic devices to the individual that we
12:31PM 9 detained them from.

12:31PM 10 Q. Was that done in this particular case?

12:31PM 11 A. Yes, it was.

12:31PM 12 Q. And why don't you go through the process. So what
12:31PM 13 happened? Once you got those and you forwarded them to your
12:31PM 14 forensics folks, describe to the Court, kind of, what happened
12:31PM 15 in this particular investigation, with these particular
12:31PM 16 electronic devices?

12:31PM 17 A. So with this investigation, I'm coordinating relatively
12:31PM 18 closely with our computer forensics agent. As I said, these
12:31PM 19 things take time, they can take a couple days to fully do a
12:31PM 20 complete extraction.

12:31PM 21 As a device was finished, the forensics agent would put it
12:31PM 22 on an internal reviewing system within our office. This is a
12:31PM 23 system that's closed off from the internet, it basically allows
12:32PM 24 -- an evidence reviewing station -- which allows me, then, to
12:32PM 25 perform a cursory examination of items on the phone. Looking

12:32PM 1 through photos, looking through contact lists, looking through
12:32PM 2 emails, looking through apps that are on the phone. There's a
12:32PM 3 number of things that we're looking for.

12:32PM 4 In this case, because we had the advance knowledge of Mr.
12:32PM 5 Roggio and had an idea of what he was involved in, I was able
12:32PM 6 to tailor those searches using key words. And I believe one of
12:32PM 7 the key words -- we had a known partner of his in Iraq, the
12:32PM 8 name Palad(phonetic), it's unique, it would be something that,
12:32PM 9 you know, would pop out, and allow me to do a quick search, in
12:32PM 10 order to determine, Is there contraband? Is there evidence? Is
12:33PM 11 there fruits of the crime on this phone?

12:33PM 12 Those cursory examinations were done on each of the phones
12:33PM 13 and documented within my report. You know, not everything, just
12:33PM 14 a couple things to say, Hey, yep, there's evidence on this
12:33PM 15 phone, and those items were secured. Once we were satisfied
12:33PM 16 that all the devices, there were extractions performed on them,
12:33PM 17 and the computer forensics agent confirmed that the data was
12:33PM 18 there, that it was sufficient, you know, I can't speak to all
12:33PM 19 the things they're looking at, but they're looking to make sure
12:33PM 20 that data is not corrupted and that it appears to be a full
12:33PM 21 extraction.

12:33PM 22 The items are then turned back over to me and arrangements
12:33PM 23 were made with Mr. Roggio's attorney, at the time, in East
12:33PM 24 Stroudsburg, to have them returned. And then those items were
12:34PM 25 returned by me, I drove them up to East Stroudsburg from

12:34PM 1 Philadelphia, and coordinated with his attorney's office to
12:34PM 2 return them there, at which point, one of the employees at the
12:34PM 3 attorney's office signed the form to show that she had accepted
12:34PM 4 them, and then Mr. Roggio -- they were turned over to Mr.
12:34PM 5 Roggio at that time.

12:34PM 6 Q. You indicated that the telephones or cell phones were
12:34PM 7 searched, but there was also other electronic devices that were
12:34PM 8 searched, is that correct?

12:34PM 9 A. Yes, correct, the iPad, laptop computer, there were some
12:34PM 10 Sandisk media cards, as well as an iPod, I believe, that were
12:34PM 11 all submitted for forensic analysis.

12:34PM 12 Q. The testimony today indicates that the devices were
12:34PM 13 detained on February 26 of 2017. Do you recall the day that you
12:34PM 14 surrendered those items back to Mr. Roggio's attorney?

12:35PM 15 A. So February 26, they were detained, it may have been a
12:35PM 16 little over -- I want to say March 30th is the date I'm
12:35PM 17 thinking, so a little over 30 days.

12:35PM 18 Q. I'll ask you to take a look at Government's Exhibit No.
12:35PM 19 11, please.

12:35PM 20 A. I have it. This is my Homeland Security Investigations
12:35PM 21 Report of Investigation. The report is detailing the events
12:35PM 22 surrounding March 21, 2017, Federal search warrants executed on
12:35PM 23 electronic devices obtained from Ross Roggio and Christine
12:35PM 24 Sidiropoulou on February 26.

12:35PM 25 MR. HINKLEY: First of all, the Government would move for

12:35PM 1 admission of Government's Exhibit No. 11.

12:36PM 2 MR. BARTOLAI: No objection.

12:36PM 3 THE COURT: Government's 11 is admitted.

12:36PM 4 (At this time Government's Exhibit No. 11 was admitted
12:36PM 5 into evidence.)

12:36PM 6 BY MR. HINKLEY:

12:36PM 7 Q. The search warrant referenced in this document, would that
12:36PM 8 be Government's Exhibit No. 5?

12:36PM 9 A. Yes.

12:36PM 10 Q. Finally, I'm going to ask you to look at Government's
12:36PM 11 Exhibit No. 12.

12:36PM 12 A. Okay. This is Homeland Security Investigations Report of
12:36PM 13 Investigation documenting and detailing the initial summary of
12:36PM 14 evidence recovered from the search warrant, forensics review of
12:36PM 15 the Roggio and Sidiropoulou electronic devices.

12:36PM 16 Q. So I'm clear, what you're saying is, it documents those
12:36PM 17 items which you, on your quick review of each of these
12:37PM 18 electronic devices, found in there established that there was
12:37PM 19 some type of evidence that was germane to the investigation, is
12:37PM 20 that right?

12:37PM 21 A. Correct.

12:37PM 22 Q. So this is your report documenting the things that you
12:37PM 23 found before there was a full search of the items?

12:37PM 24 A. Well, the items are fully -- there's no way to partially
12:37PM 25 extract.

12:37PM 1 Q. Okay, explain that.

12:37PM 2 A. The devices are fully extracted. This is my report on a
12:37PM 3 cursory review of whether or not we are going to seize these
12:37PM 4 phones. And based on -- the phones and the electronic devices.
12:37PM 5 Based on these initial findings, it was an investigative
12:37PM 6 decision to seize the phones, at that point, and an iPad and
12:37PM 7 all the electronic devices that were in their possession when
12:37PM 8 they were secondary to J.F.K. on the 26th.

12:38PM 9 MR. HINKLEY: Your Honor, the Government moves to admit
12:38PM 10 Government's Exhibit 12.

12:38PM 11 THE COURT: Mr. Bartolai?

12:38PM 12 MR. BARTOLAI: Yes, Your Honor. May I have a moment? Your
12:38PM 13 Honor, I'm going to object to No. 12. My understanding from the
12:38PM 14 testimony is that this No. 12 contains information that
12:38PM 15 was -- that resulted from a phone extraction of these
12:39PM 16 electronic devices, so under those circumstances, Your Honor,
12:39PM 17 this would have been -- the information contained in No. 12
12:39PM 18 would have been information that was only learned after this
12:39PM 19 border search. So I would object, Your Honor, on that basis.

12:39PM 20 THE COURT: Mr. Hinkley?

12:39PM 21 MR. HINKLEY: As I understand the testimony, this was the
12:39PM 22 initial search of the items, so it would have been the
12:39PM 23 equivalent of someone looking into each of the items and seeing
12:39PM 24 whatever they saw, which would then, as I understand the
12:39PM 25 testimony, given the agent's belief, there was additional

12:39PM 1 information which would be germane to the investigation, so a
12:39PM 2 more thorough search would thereafter be completed.

12:39PM 3 And I think this document only -- what it does is it
12:40PM 4 documents what the initial reviewing of the evidence was
12:40PM 5 determined by the agents.

12:40PM 6 THE WITNESS: I could explain a little further, if you'd
12:40PM 7 like.

12:40PM 8 THE COURT: Mr. Burke, is this a summary of the efforts of
12:40PM 9 the various agencies who have been involved in the
12:40PM 10 investigation of Mr. Roggio, both prior to and after February
12:40PM 11 26?

12:40PM 12 THE WITNESS: This is specific to the border search that
12:40PM 13 I -- this is, in fact, the border search that I conducted of
12:40PM 14 the electronic devices, which I refer to as a cursory review of
12:40PM 15 the data that had been extracted. And this was done in
12:40PM 16 concurrence with our border search authorities, which are an
12:40PM 17 exemption under the Fourth Amendment.

12:41PM 18 THE COURT: What I see in the document are references
12:41PM 19 beginning much earlier than the time of your cursory review. So
12:41PM 20 is it fair to say what I'm looking at is not only your review
12:41PM 21 of the forensic analysis but, also, all of the events and
12:41PM 22 undertakings that took place before that?

12:41PM 23 THE WITNESS: So the dates referred to in the past are
12:41PM 24 referring to emails that I recovered during this border
12:41PM 25 search --

12:41PM 1 THE COURT: I see.

12:41PM 2 THE WITNESS: -- that I determined to be or believed to be
12:41PM 3 evidence, as part of this investigation.

12:41PM 4 THE COURT: So I'm not sure -- I want to make clear my own
12:41PM 5 understanding of what the objection is.

12:41PM 6 Tell me again why you're objecting to this document?

12:41PM 7 MR. BARTOLAI: My understanding, Your Honor, is that this
12:42PM 8 individual searched the phone after the border search, after
12:42PM 9 the items were detained, and the items referred to in
12:42PM 10 Government Exhibit 12 are the results of that search that he
12:42PM 11 conducted after the phone was seized, after the electronic
12:42PM 12 devices were seized.

12:42PM 13 THE COURT: And why does that make the document itself
12:42PM 14 inadmissible?

12:42PM 15 MR. BARTOLAI: Well, Your Honor, we would submit that it
12:42PM 16 would have no bearing upon his -- you know, it would have no
12:42PM 17 bearing upon the initial decision to seize the phone, by way of
12:42PM 18 the border search. He wasn't even there, at that point in time,
12:42PM 19 Your Honor. So this is like post-search data.

12:42PM 20 And I believe it was extracted, which would be forensic. I
12:42PM 21 don't think this is a cursory review of the phones, I think his
12:42PM 22 testimony is that it has been -- it was an extraction, a phone
12:42PM 23 dump, I think.

12:43PM 24 THE COURT: Before I speak, go ahead, Mr. Hinkley, do you
12:43PM 25 want to say something?

12:43PM 1 MR. HINKLEY: Well, I think that's the subject of today's
12:43PM 2 hearing, is it not?

12:43PM 3 THE COURT: It is.

12:43PM 4 MR. HINKLEY: So I think it's admissible.

12:43PM 5 THE COURT: Well, let's go back to the basic Rules of
12:43PM 6 Evidence. Does this document -- is there sufficient indicia of
12:43PM 7 admissibility to allow it in, even though the inferences that
12:43PM 8 you would draw from the exhibit are obviously different, and,
12:43PM 9 in fact, it would seem to me that the arguments that are being
12:43PM 10 made, essentially, go to whether or not reasonable suspicion
12:43PM 11 existed at a sufficient point in time to allow this in or
12:43PM 12 whether, in fact, there was not reasonable suspicion prior to
12:43PM 13 February 26.

12:43PM 14 Now, that's a decision I'm going to have to make, but the
12:43PM 15 document itself, in terms of its preparation, is a classic
12:43PM 16 business record here generated in the course of Homeland
12:43PM 17 Security's activities, is it not? How could I exclude this, as
12:44PM 18 lacking the requisite indicia of admissibility under the Rules
12:44PM 19 of Evidence, understanding that both of you would draw
12:44PM 20 different inferences from it, presumably?

12:44PM 21 MR. HINKLEY: You wouldn't be surprised to hear that I
12:44PM 22 agree with the Court.

12:44PM 23 MR. BARTOLAI: I have to agree, as well. I understand.

12:44PM 24 THE COURT: Fine. Let's go.

12:44PM 25 (At this time Government's Exhibit No. 12 was admitted

12:44PM 1 into evidence.)

12:44PM 2 MR. HINKLEY: I have no further questions, Your Honor.

12:44PM 3 Thank you.

12:44PM 4 THE COURT: All right. Mr. Bartolai?

12:44PM 5 MR. BARTOLAI: Your Honor, may we take a break?

12:44PM 6 THE COURT: Sure. It's 12:43. How much time do you want? Do
12:44PM 7 you want to take 30 minutes here?

12:44PM 8 MR. BARTOLAI: That would be fine, Judge.

12:44PM 9 THE COURT: All right, so 1:15.

01:15PM 10 (At this time a luncheon recess was taken.)

01:16PM 11 THE COURT: Mr. Bartolai, are you ready to proceed?

01:19PM 12 MR. BARTOLAI: Yes.

01:19PM 13 CROSS EXAMINATION

01:19PM 14 BY MR. BARTOLAI:

01:19PM 15 Q. Good afternoon.

01:19PM 16 A. Good afternoon, sir.

01:19PM 17 Q. How are you? Okay, so I understand this is a multi-agency
01:19PM 18 investigation; is that right?

01:19PM 19 A. Correct.

01:19PM 20 Q. And we have the FBI involved and Customs Border
01:19PM 21 Protection, as well as the Commerce Department?

01:19PM 22 A. Correct.

01:19PM 23 Q. When did you become involved in this investigation?

01:19PM 24 A. I believe we were initially -- we were initially talked to
01:19PM 25 about it by the U.S. Attorney's Office in late December or

01:20PM 1 early January of 2017, so December of '16 or -- I'm thinking
01:20PM 2 January 2017. At some point, I requested all the case
01:20PM 3 information and updates, which I reviewed throughout early
01:20PM 4 January of 2017, and our first case coordination meeting was, I
01:20PM 5 believe, January 24th, 2017.

01:20PM 6 Q. Is this the meeting where you determined that the border
01:20PM 7 search option was discussed?

01:20PM 8 A. Yes.

01:20PM 9 Q. What would the date have been?

01:20PM 10 A. I'm sorry, what was that?

01:20PM 11 Q. What date do you recall? January 24th?

01:20PM 12 A. I think it's January 24th.

01:20PM 13 Q. 1/24/17?

01:20PM 14 A. Correct.

01:20PM 15 Q. Now, this case or this investigation initially kicked off,
01:21PM 16 approximately, March 30th, 2016; correct?

01:21PM 17 A. Correct.

01:21PM 18 Q. So it had been ongoing for some time before Homeland
01:21PM 19 Security Investigations got involved; is that right?

01:21PM 20 A. Correct.

01:21PM 21 Q. And were you the first agent from Homeland Security
01:21PM 22 Investigations to take on the case?

01:21PM 23 A. Yes, I was.

01:21PM 24 Q. All right, so you -- okay. So up until that point in time,
01:21PM 25 it was ongoing, and it was -- this was Homeland Security's

01:21PM 1 first part in the investigation, around January -- or December,
01:21PM 2 like you said, 2016; right?

01:21PM 3 A. Correct.

01:21PM 4 Q. You were requested by the U.S. Attorney's Office to become
01:21PM 5 involved?

01:21PM 6 A. I believe what had happened was, when they were evaluating
01:21PM 7 the evidence that they had obtained from the search warrants on
01:21PM 8 Mr. Roggio's email addresses, there were items that were -- an
01:21PM 9 item can be controlled by the Department of Commerce, an item
01:21PM 10 can be controlled by the Department of State.

01:22PM 11 Because there were items that appeared to, possibly, be
01:22PM 12 controlled by the Department of State and because of the export
01:22PM 13 issues being involved, which is, Homeland Security
01:22PM 14 Investigations' main purview, I mean, this is one of the major
01:22PM 15 things that we investigate. We were originally customs, U.S.
01:22PM 16 Customs.

01:22PM 17 I mean, we're essentially the same entity as CBP, but when
01:22PM 18 they created the Department of Homeland Security in 2003, they
01:22PM 19 removed the investigative component from Customs and put us in
01:22PM 20 as Immigration Customs Enforcement, and it just -- we're the
01:22PM 21 same but different, it's kind of weird.

01:22PM 22 But CBP officers are border authorities, HSI agents are
01:22PM 23 also border authorities, and it all stems from us being under
01:22PM 24 the same umbrella, under U.S. Customs, before the Homeland
01:23PM 25 Security switch.

01:23PM 1 Q. All right, so when you had this meeting -- now, up until
01:23PM 2 that point in time, the investigation has been ongoing, and you
01:23PM 3 testified a little bit about what you learned from reviewing
01:23PM 4 the documents and speaking to the agents; right?

01:23PM 5 A. Correct.

01:23PM 6 Q. And I'm going to take you through that, as well. I think,
01:23PM 7 at some point in time, you had -- do you still have
01:23PM 8 Government's Exhibit 1 up there, the Homeland Security Agent
01:23PM 9 Hertzog's Application for Search Warrant?

01:23PM 10 A. Is that 5?

01:23PM 11 Q. It's No. 5, I'm sorry.

01:23PM 12 A. I do, yes.

01:23PM 13 Q. I believe you testified relative to that?

01:23PM 14 A. Yes.

01:23PM 15 Q. And I think Mr. Hinkley directed you to where this
01:23PM 16 investigation began, and that would have been around Paragraph
01:23PM 17 17; correct?

01:23PM 18 A. Correct.

01:23PM 19 Q. And that's on March 30th, 2016 when this tip came in; is
01:23PM 20 that right?

01:23PM 21 A. Yes.

01:23PM 22 Q. All right, so I want to talk to you, like, first, broad
01:24PM 23 and then we can get into more specifics, so it was -- and
01:24PM 24 correct me if I'm wrong -- on March 30, 2016, someone from
01:24PM 25 Drill Masters Tool, Drill Masters Eldorado Tool had called the

01:24PM 1 FBI tip line, relative to -- I think the search warrant
01:24PM 2 application mentions gun parts being re-shipped to Iraq;
01:24PM 3 correct?

01:24PM 4 A. Correct.

01:24PM 5 Q. Now, would you agree -- now, at this point in time, what
01:24PM 6 would be the gun parts that were alleged to have been shipped
01:24PM 7 to Iraq?

01:24PM 8 A. I believe this is referring to the buttons that I had
01:24PM 9 originally spoken to. I don't believe there's actual gun parts,
01:25PM 10 at this point, that Eldorado is talking about, in the name of
01:25PM 11 barrels, firing pins, that kind of thing.

01:25PM 12 Q. I understand. That's, essentially, my question. So 17 is
01:25PM 13 somewhat inaccurate, in that, it's not really gun parts, it's
01:25PM 14 more or less, perhaps, tools that can be used to, maybe, ream a
01:25PM 15 barrel; is that right?

01:25PM 16 A. Gun manufacturing parts.

01:25PM 17 Q. Kind of like the difference between a wheel and a tire
01:25PM 18 mounter, a tool that would be used to mount a tire. Two
01:25PM 19 different things?

01:25PM 20 A. Sure.

01:25PM 21 Q. All right, so this is the tip, and this would have been on
01:25PM 22 March 30, 2016 to the FBI?

01:25PM 23 A. Correct.

01:25PM 24 Q. And at this point in time, is the FBI, essentially, the
01:25PM 25 lead on this investigation?

01:25PM 1 A. I would call them -- since the tip came in to them, I
01:26PM 2 would, yes, refer to them as the lead.

01:26PM 3 Q. For the beginning there, they're pretty much doing the
01:26PM 4 legwork; would you agree?

01:26PM 5 A. Correct.

01:26PM 6 Q. In fact, it was the FBI -- would that be FBI agent
01:26PM 7 O'Donnell -- or Donnelly?

01:26PM 8 A. Thomas O'Donnell, yes.

01:26PM 9 Q. He would have been the guy -- when the search warrant
01:26PM 10 application refers to the FBI Special Agent, we're referring to
01:26PM 11 Mr. O'Donnell; right?

01:26PM 12 A. Correct.

01:26PM 13 Q. And he would have been the individual who spoke with the
01:26PM 14 people from Drill Masters; right?

01:26PM 15 A. Yes.

01:26PM 16 Q. And he would have been the person that spoke to the
01:26PM 17 individual from the package place; correct?

01:26PM 18 A. Correct.

01:26PM 19 Q. And The Packaging Place is the actual place that was
01:26PM 20 involved in the shipping of items; right?

01:26PM 21 A. Yes, correct.

01:26PM 22 Q. And Drill Masters Tool Eldorado, that's in Connecticut;
01:26PM 23 correct?

01:26PM 24 A. Yes.

01:26PM 25 Q. And this package place is up here near -- around

01:27PM 1 Stroudsburg, in Pennsylvania, in the Middle District?

01:27PM 2 A. Correct.

01:27PM 3 Q. And it would have been Agent Donnelly(sic) that spoke with
01:27PM 4 people from Drill Masters?

01:27PM 5 A. Yes.

01:27PM 6 Q. And do you recall -- again, this is from your
01:27PM 7 investigation, from your notes, from your reviews, that he
01:27PM 8 spoke to a person by the name of Debbie Cornwall?

01:27PM 9 A. Correct.

01:27PM 10 Q. And she had provided information relative to an order that
01:27PM 11 was made regarding these 15 rifle combo buttons; correct?

01:27PM 12 A. Yes.

01:27PM 13 Q. And the payment for those products; correct?

01:27PM 14 A. Correct.

01:27PM 15 Q. And where they were shipped; correct?

01:27PM 16 A. Yes.

01:27PM 17 Q. And her information that she provided was that these -- it
01:27PM 18 was Roggio that had purchased these items; correct?

01:27PM 19 A. Based on the invoicing that she supplied, yes.

01:27PM 20 Q. It wasn't just rifle combo buttons, there were other items
01:28PM 21 involved, as well; correct?

01:28PM 22 A. Correct.

01:28PM 23 Q. And these items were shipped to Pennsylvania?

01:28PM 24 A. Yes.

01:28PM 25 Q. And Drill Masters never shipped these items to Iraq;

01:28PM 1 correct?

01:28PM 2 A. Correct.

01:28PM 3 Q. She had provided you with some documentation, and we will
01:28PM 4 look at that in a little bit, but she had provided the
01:28PM 5 information to Special Agent Donnelly; right?

01:28PM 6 A. O'Donnell.

01:28PM 7 Q. I'm sorry, I'll keep saying that, it's a tick, I guess.
01:28PM 8 O'Donnell, very good.

01:28PM 9 And it was, also, Agent O'Donnell that had the occasion to
01:28PM 10 speak with Frank Monteforte from The Packing Place?

01:28PM 11 A. Yes.

01:28PM 12 Q. He's the individual who actually met with Kristy Roggio
01:28PM 13 and observed these items and called Drill Masters to get a
01:28PM 14 description of them; right?

01:28PM 15 A. Correct.

01:28PM 16 Q. And, again, this is all -- it's all contained in the
01:28PM 17 search warrant application of Officer Hertzog, as well as what
01:29PM 18 you would have reviewed in your -- in coming up to speed in the
01:29PM 19 investigation; right?

01:29PM 20 Now, as a result of your investigation into these
01:29PM 21 preliminary matters, it turns out that this -- when Mr.
01:29PM 22 Monteforte had contacted Drill Masters for a description of
01:29PM 23 certain items so that he could complete what is known as an SED
01:29PM 24 or Shippers Export Declaration?

01:29PM 25 A. Yes.

01:29PM 1 Q. Did you ever see the Shippers Export Declaration?

01:29PM 2 A. At some point, I'm sure I did.

01:29PM 3 Q. Do you have it with you today?

01:29PM 4 A. Unless -- if it's not up here, I do not have it.

01:29PM 5 Q. Okay, all right. And this would have been a document that
01:29PM 6 was completed by a Frank Monteforte of The Packaging Place?

01:30PM 7 A. Yes.

01:30PM 8 Q. And he had contacted Drill Masters for a description of
01:30PM 9 the items; correct?

01:30PM 10 A. Correct.

01:30PM 11 Q. And he was told that they were gun reamers -- they were
01:30PM 12 reamers for drills?

01:30PM 13 A. I don't know the specific conversation that Mr. Monteforte
01:30PM 14 had with Ms. Cornwall at Eldorado.

01:30PM 15 Q. All right. You have Government's No. 5 there?

01:30PM 16 A. Yes.

01:30PM 17 Q. Would you look at Paragraph 24, please?

01:30PM 18 A. Sure.

01:30PM 19 Q. I'm going to read -- and you can just correct me if I'm
01:30PM 20 wrong.

01:30PM 21 "Monteforte stated that Roggio's packages were shipped to
01:30PM 22 Iraq via DHL (DHL Airway Bill 5622077020) and that the items
01:30PM 23 were described as reamers and drill bits."

01:30PM 24 Right?

01:31PM 25 A. Yes.

01:31PM 1 Q. Okay, so this is -- this search warrant application,
01:31PM 2 Paragraph 24, says that these items were described as reamers
01:31PM 3 and drill bits; correct?

01:31PM 4 A. Correct.

01:31PM 5 Q. And that would have been after Mr. Monteforte had
01:31PM 6 contacted Drill Masters Eldorado and spoke to Debbie Cornwall
01:31PM 7 inquiring about a description of the items; correct?

01:31PM 8 A. Correct.

01:31PM 9 Q. And, also, Mrs. Cornwall from Drill Masters, she had
01:31PM 10 mentioned that Mr. Roggio, at some point in time, ordered 15
01:31PM 11 rifling combo buttons; correct?

01:31PM 12 A. Yes, correct.

01:31PM 13 Q. And she was specific in describing them as rifling combo
01:31PM 14 buttons; correct?

01:31PM 15 A. Yes.

01:31PM 16 Q. And, in fact, she said that she would not ship rifling
01:32PM 17 combo buttons to Iraq; correct?

01:32PM 18 A. Correct.

01:32PM 19 Q. Because she knows that that's a controlled item; right?

01:32PM 20 A. Correct.

01:32PM 21 Q. Now, regarding Mr. Monteforte, when he was interviewed by
01:32PM 22 Special Agent O'Donnell, he had mentioned that part of the
01:32PM 23 parcel that was to be shipped to Iraq by Mrs. Roggio included
01:32PM 24 Zippo lighters; correct?

01:32PM 25 A. Yes.

01:32PM 1 Q. But that he would not ship those Zippo liters, because
01:32PM 2 they were an item that couldn't be shipped; is that right?

01:32PM 3 A. Yeah, my understanding is they weren't able to determine
01:32PM 4 if there was fluid, flammable fluid within the liters.

01:32PM 5 Q. Okay, so he would not ship them; is that right?

01:32PM 6 A. DHL would not ship them.

01:32PM 7 Q. So whatever Kristy Roggio brought to Frank Monteforte at
01:32PM 8 The Packaging Place in Pennsylvania there, was, in fact,
01:33PM 9 shipped to Iraq; correct?

01:33PM 10 A. Correct.

01:33PM 11 Q. And it was shipped by DHL; correct?

01:33PM 12 A. Correct.

01:33PM 13 Q. And we see here, we see here, I guess -- I don't know what
01:33PM 14 you would call it -- an airway bill, an identifier; right?

01:33PM 15 A. Yes.

01:33PM 16 Q. Okay, now, this would have been, approximately, March 29
01:33PM 17 when this package was to be shipped or when she presented it to
01:33PM 18 Packaging Place?

01:33PM 19 A. I believe they referenced it as March 30, 2016 DHL
01:33PM 20 shipment.

01:33PM 21 Q. The tip also came in on March 30, 2016; right?

01:33PM 22 A. Yes.

01:33PM 23 Q. The package was never interdicted, was it?

01:33PM 24 A. No.

01:33PM 25 Q. No one has ever determined from observation what was in

01:33PM 1 that package; correct?

01:33PM 2 A. I mean, through interviews with Mr. Monteforte and

01:34PM 3 descriptions of how the buttons would look in packaging

01:34PM 4 obtained from the Eldorado Tool, he identified them as

01:34PM 5 believing that those items were part of the shipment that had

01:34PM 6 been sent to Iraq.

01:34PM 7 Q. My question to you, though, is, no one has ever -- no one

01:34PM 8 was ever on the other end of that package and opened it up and

01:34PM 9 saw it, from law enforcement, either, yourself or --

01:34PM 10 A. Yes, the package was never inspected by law enforcement.

01:34PM 11 Q. No photos were ever taken by either -- by anyone, Mr.

01:34PM 12 Monteforte or anyone, regarding that?

01:34PM 13 A. No.

01:34PM 14 Q. This would have gone -- a package being sent from

01:34PM 15 Pennsylvania to Iraq through DHL would have gone through

01:35PM 16 Customs?

01:35PM 17 A. Yes.

01:35PM 18 Q. All right. And it would have been subjected to a border

01:35PM 19 search there if required or if necessary?

01:35PM 20 A. Correct.

01:35PM 21 Q. This SED would have accompanied that package, as well?

01:35PM 22 A. Yes.

01:35PM 23 Q. And that description of reamers and drill bits would have

01:35PM 24 been on that SED?

01:35PM 25 A. In some form or fashion, yes.

01:35PM 1 Q. And some of them could have seen that and determined that
01:35PM 2 a further look would be required; correct?

01:35PM 3 A. Depending on -- you have to understand -- the number of
01:35PM 4 packages coming through for CBP, it's immense. They would
01:35PM 5 normally have to have some sort of targeting in advance.
01:35PM 6 They're not looking, specifically, at wording on Shipping
01:35PM 7 Export Declarations for something that looks suspicious.

01:35PM 8 So, maybe, out of chance, it could have been inspected,
01:35PM 9 but in this case, it wasn't.

01:36PM 10 Q. So in other words, if it was, would we know?

01:36PM 11 A. There would have been a report indicating that that
01:36PM 12 package was inspected and found to contain, you know,
01:36PM 13 suspicious items.

01:36PM 14 Q. If it was, in fact, inspected and found to contain
01:36PM 15 suspicion items, there would have been a report; correct?

01:36PM 16 A. Correct.

01:36PM 17 Q. And there's no report; correct?

01:36PM 18 A. Correct.

01:36PM 19 Q. And if it was inspected and not found to contain, would
01:36PM 20 there have been a report?

01:36PM 21 A. CBP may have an internal system to document just packages
01:36PM 22 that they are opening and inspecting. Typically, they put a
01:36PM 23 letter in the package to indicate that the package had been
01:36PM 24 opened for inspection and then sealed with, basically, like,
01:36PM 25 green evidence tape, indicating Customs and Border Protection

01:36PM 1 had, in fact, inspected the package.

01:37PM 2 Q. But in this case, there's been no report about that;
01:37PM 3 correct?

01:37PM 4 A. Correct.

01:37PM 5 Q. And, in fact, now, I think you had indicated that, by
01:37PM 6 chance, a package such as this could have gone through; is that
01:37PM 7 right?

01:37PM 8 A. Oh, absolutely.

01:37PM 9 Q. Now, if you had put an alert, or if someone -- I know you
01:37PM 10 weren't involved at this point in time -- but if someone had
01:37PM 11 alerted, when they received this tip on March 30th, 2016,
01:37PM 12 regarding this package from Packaging Place going to Iraq with
01:37PM 13 an airbill, a DHL airway bill number, I mean, that certainly
01:37PM 14 could have been interdicted; correct?

01:37PM 15 A. Potentially, yes. As part of my -- as I said, as part of
01:37PM 16 my normal course, whenever I open an investigation in my case
01:37PM 17 system, I'm entering as much information on subjects as I can,
01:37PM 18 which would include all known information, addresses, you know,
01:38PM 19 both foreign and domestic, phone numbers, emails, if I had had
01:38PM 20 a lookout with the information provided, it would be determined
01:38PM 21 on what was included in the Shipping Export Declaration.

01:38PM 22 If Mr. Roggio's name had appeared on it, if a phone number
01:38PM 23 that matched my record appeared on it, then, there should be an
01:38PM 24 indicator alerting me that there is an outbound package going.
01:38PM 25 It is not fool proof. There is the volume of materials going in

01:38PM 1 and out of the country, our system just isn't -- it's fallible.

01:38PM 2 Q. All right, so in other words, this package, this package

01:38PM 3 was never interdicted?

01:38PM 4 A. I was unaware of this package at the time, yes.

01:38PM 5 Q. You weren't on the case at this point?

01:39PM 6 A. Correct.

01:39PM 7 Q. But an alert could have been put out for the package;

01:39PM 8 right?

01:39PM 9 A. If I had been on the case prior to, yes, there's a good

01:39PM 10 probability that we would have interdicted that package.

01:39PM 11 Q. Thank you. Now, okay, so while we're here --

01:39PM 12 MR. BARTOLAI: Judge, I'd like to use the Elmo. Should I

01:39PM 13 wear my mask while I do that?

01:39PM 14 THE COURT: Unless someone has an objection to you not

01:39PM 15 wearing it, you can do so. Everybody's all right. Okay.

01:39PM 16 MR. BARTOLAI: Thank you.

01:39PM 17 BY MR. BARTOLAI:

01:39PM 18 Q. You have testified regarding some of these exhibits, and I

01:39PM 19 just wanted to go over some of it with you now.

01:40PM 20 When Special Agent O'Donnell was following through on this

01:40PM 21 investigation, he had the occasion to speak with people from

01:40PM 22 Drill Masters Eldorado Tool, Inc. Right?

01:40PM 23 A. Yes.

01:40PM 24 Q. And they provided him with some documentation relevant to

01:40PM 25 the matters that -- relative to the orders that Mr. Roggio had

01:40PM 1 placed; is that right?

01:40PM 2 A. Yes.

01:40PM 3 Q. And I'm going to just show you -- do you have Government's
01:40PM 4 Exhibit 6 up there?

01:40PM 5 A. I do.

01:40PM 6 Q. Okay, so I'm putting it on this Elmo, and you could see it
01:40PM 7 there, as well.

01:40PM 8 When we look at this, I'll go through each page with you,
01:40PM 9 it's a multi-page document, we see a sales order from Drill
01:40PM 10 Masters Eldorado; right?

01:40PM 11 A. Yes.

01:40PM 12 Q. And this order was made on December 3, 2015?

01:41PM 13 A. Correct.

01:41PM 14 Q. And part of the description is a quantity of 15 full-bore
01:41PM 15 reamers?

01:41PM 16 A. Yes.

01:41PM 17 Q. And 15 combo buttons, right, and the dimensions are there,
01:41PM 18 are located, right?

01:41PM 19 A. Yes.

01:41PM 20 Q. Now, turning the page, part of the same exhibit, this is
01:41PM 21 just a continuation, is it not, of that?

01:41PM 22 A. Yes, shipping numbers are still the same.

01:41PM 23 Q. Yes, the packing list. Again, it talks about the items
01:41PM 24 etc., right? And then I'm going to turn the page. Again, this
01:41PM 25 is from Drill Masters, and it's regarding that 12/3 order;

01:41PM 1 correct?

01:41PM 2 A. Okay.

01:41PM 3 Q. And it lists various items; correct?

01:42PM 4 A. Yes.

01:42PM 5 Q. Okay, so there's a machine rod, a wire slot on rod, button

01:42PM 6 grinding, rolo-matic NPS grind, button lapping, rifle cut and

01:42PM 7 so on, you could see grinder taper for rod, button braze, etc.,

01:42PM 8 so in other words, Mr. Roggio, when he placed this order on the

01:42PM 9 3rd of December 2015, he ordered more than just rifle combo

01:42PM 10 buttons; would you agree?

01:42PM 11 A. Yes

01:42PM 12 Q. And then, as Special Agent O'Donnell conducted his

01:43PM 13 investigation, he also obtained documents from The Packaging

01:43PM 14 Place; right?

01:43PM 15 A. Yes.

01:43PM 16 Q. I'm going to show you Government's Exhibit 7 in a minute,

01:43PM 17 but do you have that up there with you?

01:43PM 18 A. I'm sure I do, yes.

01:43PM 19 Q. All right. I'll put this on the Elmo. So Government's

01:43PM 20 Exhibit No. 7 is a document entitled on top, The Package Place.

01:43PM 21 This would have been a form that was completed by Kristy

01:43PM 22 Roggio, when she brought these items to The Package Place to be

01:43PM 23 sent to Iraq; is that right?

01:43PM 24 A. I believe so, yes.

01:44PM 25 Q. In fact, you could see Mrs. Roggio's signature there?

01:44PM 1 A. Yes, at the bottom, yes.

01:44PM 2 Q. It says, Ship to, and it's Ross Roggio?

01:44PM 3 A. Yes.

01:44PM 4 Q. In Iraq; right?

01:44PM 5 A. Yes.

01:44PM 6 Q. And, then, again, Government's No. 7 is a multi-page

01:44PM 7 document, I'm turning the page. This would be the

01:44PM 8 actual -- this is to prepare the shipment, right, this would

01:44PM 9 have been something The Package Place would have prepared?

01:44PM 10 A. Yes.

01:44PM 11 Q. And they, as part of their shipping, they identify -- they

01:44PM 12 describe the merchandise that was being shipped; right?

01:44PM 13 A. Yes.

01:44PM 14 Q. And they highlight it here, torque wrenches, lower

01:44PM 15 receiver, vice blocks, magnetic soft jaws, torque hand tool,

01:44PM 16 barrel nut wrench, castle nut wrench --

01:45PM 17 MR. BARTOLAI: Judge, may I have a moment?

01:45PM 18 THE COURT: Sure.

01:45PM 19 BY MR. BARTOLAI:

01:45PM 20 Q. Pin D-10 tool, bolt catch pin punch, etc., and turning the

01:46PM 21 page, running boards, running board brackets.

01:46PM 22 A. Okay.

01:46PM 23 Q. Is this a document that was provided by The Package Place

01:46PM 24 to Special Agent Donnelly?

01:46PM 25 A. Yes.

01:46PM 1 Q. Also, again, continuing with the page M-tech axe -- I'm
01:46PM 2 sorry, if I may just start again here, I apologize.

01:46PM 3 We talked about Government Exhibit 7, the very first page,
01:46PM 4 Packaging Place signed by Kristy Roggio, where she talks about
01:46PM 5 the box of tools, and, then, this pen and keyboard. Then, when
01:46PM 6 I turned the page, I notice some of these items that I
01:47PM 7 discussed were in reference to a February 8, 2016 shipment?

01:47PM 8 A. Okay.

01:47PM 9 Q. I mean, is that -- I see an annotation up there regarding
01:47PM 10 a February 8, 2016 shipment. Can you tell us about that, what
01:47PM 11 that is?

01:47PM 12 A. I believe these are prior shipments, so when Special Agent
01:47PM 13 Donnelly -- I mean, O'Donnell -- went to The Packaging Place,
01:47PM 14 he would have requested any and all shipments that Mr. Roggio
01:47PM 15 had conducted.

01:47PM 16 Q. Okay, all right, so thank you for that clarification.

01:47PM 17 A. I believe this package of documents is copies of the
01:47PM 18 documents that Mr. Monteforte had turned over.

01:47PM 19 Q. Now, this second page, this is the second page of
01:47PM 20 Government Exhibit 7. This second page that says, View
01:48PM 21 Commercial Invoice February 8, 2016 shipment, that is not the
01:48PM 22 shipment that drew the attention of Drill Masters; correct?

01:48PM 23 A. I don't know.

01:48PM 24 Q. Well, in other words -- okay, well, Drill Masters -- Mr.
01:48PM 25 Monteforte from Package Place contacted Drill Masters on the

01:48PM 1 30th of March, correct, and inquired as to what parts were
01:48PM 2 being sent to -- described the items in the package being sent
01:48PM 3 to Iraq; right?

01:48PM 4 A. Which would mean the commercial invoice that has the
01:48PM 5 notation March 30th of 2016.

01:48PM 6 Q. Right.

01:48PM 7 A. That's probably the one in reference.

01:48PM 8 Q. Specifically, rifle combo buttons; correct?

01:49PM 9 A. Yes.

01:49PM 10 Q. We're looking at what's in front of the Elmo now, the
01:49PM 11 second page of Government's Exhibit 7, the February 8, 2016
01:49PM 12 shipment, this does not mention rifle combo buttons; correct?

01:49PM 13 A. The February 8 shipment, no.

01:49PM 14 Q. And, then, the third page, again, I see this one at the
01:49PM 15 top references another prior shipment; is that right?

01:49PM 16 A. Yes.

01:49PM 17 Q. And that was -- that says January 19, 2016; correct?

01:49PM 18 A. Correct.

01:49PM 19 Q. Again, this is not the subject of that March 30 inquiry;
01:49PM 20 right?

01:49PM 21 A. No.

01:49PM 22 Q. Again, on this one, just for clarity, there's no rifle
01:49PM 23 combo buttons here; correct?

01:49PM 24 A. No.

01:49PM 25 Q. Now, finally, the fourth page is regarding that March 30th

01:49PM 1 2016 shipment; right?

01:50PM 2 A. Yes.

01:50PM 3 Q. And, again, the items shipped by or sent, you know, taken
01:50PM 4 to Package Place from Kristy Roggio to be shipped to Iraq would
01:50PM 5 have included -- and here there are Mtech axe, 44 of those. Do
01:50PM 6 you know what they would be?

01:50PM 7 A. I do not know.

01:50PM 8 Q. OAI gauge; 2, right? I mean, you could see a description
01:50PM 9 of the merchandise and the quantity that's being sent; right?

01:50PM 10 A. Yes.

01:50PM 11 Q. Several gauges, reamers, it says?

01:50PM 12 A. Yes.

01:50PM 13 Q. It mentions 20, right? Drill bits, it mentions 19; 9mm
01:50PM 14 drill bits, 1; right?

01:50PM 15 A. Yes.

01:50PM 16 Q. Shoe polish, saddle soap, 5.56 bits, that's 1; hollow
01:51PM 17 handle hand tool, a shoe shine buff cloth, urine test kits and
01:51PM 18 shoe shine brushes; correct?

01:51PM 19 A. Yes.

01:51PM 20 Q. All right. So would you agree that this Page 4 of this
01:51PM 21 Government Exhibit 7, relative to this shipment on March 30th,
01:51PM 22 2016, it never mentions rifle combo buttons; correct?

01:51PM 23 A. Not specifically, no.

01:51PM 24 Q. We know, from the discussion Agent O'Donnell had with the
01:51PM 25 people from Drill Masters and the invoices that they provided,

01:51PM 1 the quantity of those rifle combo buttons would have been 15;
01:51PM 2 correct?

01:51PM 3 A. Yes.

01:51PM 4 Q. And there are no items that are 15 here; correct?

01:51PM 5 A. The 9mm drill bits, even though it's a quantity of 1, the
01:51PM 6 package is a package of 15, based on my reading of this.

01:52PM 7 Q. Really? What do you base your conclusion on?

01:52PM 8 A. The unit value broken down next to the quantity. Based on
01:52PM 9 my experience of reviewing countless forms such as this, I
01:52PM 10 would look at this and think that it was a one package of 9mm
01:52PM 11 drill bits, and within that package, there were 15 units.

01:52PM 12 Q. All right, I see. And that's just based upon your
01:52PM 13 experience. How would you come up with that again? I see
01:52PM 14 quantity 1, unit value, is that 15?

01:52PM 15 A. If you look up at the first line item, that Mtech MT axe.
01:52PM 16 It says a quantity of 44.

01:53PM 17 Q. Right.

01:53PM 18 A. And then the unit value is 12. So the total number of
01:53PM 19 Mtech mount axes sent is 44 times 12, which I'm guessing is the
01:53PM 20 528 line total at the end.

01:53PM 21 Q. So you're guessing, okay.

01:53PM 22 A. I don't have a calculator in front of me.

01:53PM 23 Q. You're not guessing --

01:53PM 24 A. I'm estimating.

01:53PM 25 Q. I understand, all right. So you're, more or less, doing

01:53PM 1 the same with the drill bits. Instead of -- when they say
01:53PM 2 quantity 1, you're assuming that it's a package that contains
01:53PM 3 15; is that right?

01:53PM 4 A. Yes.

01:53PM 5 MR. BARTOLAI: May I have a moment, Judge?

01:53PM 6 THE COURT: Yes.

01:55PM 7 BY MR. BARTOLAI:

01:55PM 8 Q. Sir, relative to this -- to the commercial invoice that we
01:55PM 9 have together, and I appreciate how you're trying to determine
01:55PM 10 the number, but when we see -- when we're talking about these
01:55PM 11 9mm drill bits, and we're talking about -- do you know the type
01:55PM 12 of weapons that were being alleged to have been produced in
01:55PM 13 Iraq?

01:55PM 14 A. I believe, based on the Weapons Feasibility Report, the
01:55PM 15 plan was to do 9mm Glocks and 556 M4's, basically, .223
01:55PM 16 caliber, which is 53, 56 M4-style rifle, assault rifle.

01:55PM 17 Q. Now, when we're talking about the 9mm drill bit, which
01:56PM 18 is -- this is a metric drill bit, right, 9mm?

01:56PM 19 A. I can't comment to that.

01:56PM 20 Q. Okay, I understand.

01:56PM 21 A. From an investigative viewpoint, to me, I would, based on
01:56PM 22 my composite knowledge of the case, I would think that seeing
01:56PM 23 9mm drill bits and 556 bits are reference to push button -- the
01:56PM 24 combo buttons for drilling a barrel for a 9mm weapon and a 556
01:56PM 25 weapon.

01:56PM 1 Q. In other words -- so you're saying that the description
01:56PM 2 here that Mr. Monteforte at Packaging Place put on this report
01:56PM 3 after he had discussed with the people from Drill Masters is
01:56PM 4 different than rifle combo buttons; right?

01:57PM 5 A. I can't speak as to why Mr. Monteforte did not call them
01:57PM 6 combo buttons and went with drill bits.

01:57PM 7 Q. There's no claim that Mr. Monteforte at Packaging Place,
01:57PM 8 somehow, was involved in or a party to or complicit with
01:57PM 9 shipping these -- or knowing, at least, willfully, shipping
01:57PM 10 these items to Iraq; correct?

01:57PM 11 A. Based on my knowledge of the case, he was not considered a
01:57PM 12 suspect, and he was cooperative, up to and including an
01:57PM 13 interview that I accompanied Mr. O'Donnell on -- or Agent
01:57PM 14 O'Donnell on with Mr. Monteforte.

01:58PM 15 Q. Now, you had testified that Mr. Monteforte had looked at a
01:58PM 16 photograph of these rifle combo buttons or identified a
01:58PM 17 photograph or items depicted in a photograph?

01:58PM 18 A. If I understand the sequence of events correctly,
01:58PM 19 recalling them correctly, Agent O'Donnell obtained photos of
01:58PM 20 what these materials would look like, went to Mr. Monteforte,
01:58PM 21 showed him these photos and asked if these were representative
01:58PM 22 of the items that were packaged within this shipment, to which
01:58PM 23 he replied in the affirmative that they did match what he had
01:58PM 24 packaged in the shipment.

01:58PM 25 Q. So do you have a copy of the photograph that Agent

01:58PM 1 O'Donnell showed Mr. Monteforte?

01:59PM 2 A. Not in front of me.

01:59PM 3 Q. Have you ever seen a copy of that photo?

01:59PM 4 A. I don't recall.

01:59PM 5 Q. Do you know if he has it?

01:59PM 6 A. I would imagine that he has that.

01:59PM 7 Q. He's present today; correct?

01:59PM 8 A. Yes.

01:59PM 9 Q. All right, good. And so, now, I'm going to direct your
01:59PM 10 attention to Paragraph 26 of Government's No. 5, which is the
01:59PM 11 Search Warrant Application. I'll read it to you and I'll ask
01:59PM 12 you, it says;

01:59PM 13 During this interview, the FBI Special Agent" -- we know
01:59PM 14 that would be Mr. O'Donnell; correct?

01:59PM 15 A. Yes.

01:59PM 16 Q. -- "showed Monteforte a photograph of two cylindrical
01:59PM 17 items, which, based upon interviews with Drill Masters, is how
01:59PM 18 rifling combo buttons are packaged and shipped from Drill
02:00PM 19 Masters Tool, Inc." Correct?

02:00PM 20 A. Yes.

02:00PM 21 Q. So according to Paragraph 26, the photo that Mr. -- that
02:00PM 22 Agent O'Donnell showed Monteforte was a photograph of two
02:00PM 23 cylindrical items; right?

02:00PM 24 A. Yes.

02:00PM 25 Q. Which depicted how the buttons are packaged and shipped;

02:00PM 1 right?

02:00PM 2 A. Correct.

02:00PM 3 Q. So he -- in essence, what he showed Monteforte was two
02:00PM 4 items of the packages, not necessarily the rifle combo buttons;
02:00PM 5 correct?

02:00PM 6 A. I can't speak for that, I was not there.

02:00PM 7 Q. So would it be fair to say that you don't know?

02:00PM 8 A. Yes.

02:00PM 9 Q. And, then, when we continue on the next page, Paragraph 26
02:00PM 10 continued on the next page. It says;

02:00PM 11 "Monteforte looked at the photograph and said, yes, that
02:00PM 12 looks like them. They were in plastic tubes, and they were
02:00PM 13 about 36-inches long." Correct?

02:01PM 14 A. Correct.

02:01PM 15 Q. So what he's saying is, these are in plastic tubes, and
02:01PM 16 they were 36-inches long; right?

02:01PM 17 A. That's what it reads, yes.

02:01PM 18 Q. Now, there came a point in time when Special Agent
02:01PM 19 O'Donnell had a telephone conversation with Mr. Roggio; right?

02:01PM 20 A. Correct.

02:01PM 21 Q. That would have been, according to the Search Warrant
02:01PM 22 Affidavit on April 29, 2016, Paragraph 19?

02:02PM 23 A. Okay, yes.

02:02PM 24 Q. And it mentions that, does it not, April 29, 2016?

02:02PM 25 A. Yes.

02:02PM 1 Q. And Roggio was telephonically interviewed by the Special
02:02PM 2 Agent we know to be O'Donnell; right?

02:02PM 3 A. Yes.

02:02PM 4 Q. And, now, at this point in time, Special Agent O'Donnell
02:02PM 5 did not call Mr. Roggio directly; correct?

02:02PM 6 A. Again, I'm recalling back, I believe that Mr. Roggio's
02:02PM 7 ex-wife called and put him on the phone, if I'm correct on
02:02PM 8 that.

02:02PM 9 Q. All right, you know that Mr. Roggio -- when you say Mr.
02:02PM 10 Roggio's ex-wife, you know that he's married; correct?

02:02PM 11 A. Is he still married to Kristy Roggio? I'm not following
02:02PM 12 the saga.

02:02PM 13 Q. In other words, you knew, at the time, that he was married
02:02PM 14 -- on April 29, 2016, as far as you know, from looking back on
02:03PM 15 your investigation -- he was married to this Kristy Roggio;
02:03PM 16 correct?

02:03PM 17 A. Yes.

02:03PM 18 Q. So that would have been his wife, at the time; right?

02:03PM 19 A. Yes.

02:03PM 20 Q. Would you agree with me -- although, it may not say this
02:03PM 21 in this affidavit -- that Special Agent O'Donnell went to the
02:03PM 22 Roggio house, in an attempt to talk to Mr. Roggio, but he was
02:03PM 23 not there.

02:03PM 24 A. That's my understanding of it, yes.

02:03PM 25 Q. He was in Iraq, at the time; right?

02:03PM 1 A. Yes.

02:03PM 2 Q. So on April 29, 2016, when Special Agent O'Donnell went to
02:03PM 3 speak with Roggio at the house in Pennsylvania, he wasn't
02:03PM 4 there, he was in Iraq, and he spoke to his wife Kristy Roggio;
02:03PM 5 right?

02:03PM 6 A. Yes.

02:03PM 7 Q. And it was Kristy Roggio that called up Ross Roggio, her
02:03PM 8 husband, in Iraq, and handed the phone to the Special Agent
02:03PM 9 O'Donnell; is that right?

02:03PM 10 A. Sounds correct, yes.

02:03PM 11 Q. It was then that Agent O'Donnell asked him had he bought
02:04PM 12 these rifle combo buttons; is that right?

02:04PM 13 A. Yes.

02:04PM 14 Q. Okay, well, I'm going to -- he said that he may
02:04PM 15 have -- was that your testimony, he may have?

02:04PM 16 A. Again, if that's what I said, that's what I said.

02:04PM 17 Q. Okay. And he was asked where they were, if you recall?

02:04PM 18 A. Roggio responded, No, and Roggio went on to say that he
02:04PM 19 may have shipped cleaning kits for an AR-15, approximately, six
02:04PM 20 weeks ago.

02:04PM 21 Q. Again, when we talked about Paragraph 19 of the Search
02:05PM 22 Warrant Application, we're talking about -- again, I'm going to
02:05PM 23 just read it to you.

02:05PM 24 "On April 29 in Stroudsburg, Pennsylvania, Roggio was
02:05PM 25 telephonically interviewed by FBI Special Agent regarding the

02:05PM 1 export of gun products from the United States to Iraq. Roggio
02:05PM 2 was asked by the Special Agent if he had shipped any gun parts
02:05PM 3 or gun tools to Iraq, and Roggio responded, No."

02:05PM 4 Is that right?

02:05PM 5 A. Correct.

02:05PM 6 Q. And he went on to say that he may have shipped cleaning
02:05PM 7 kits for an AR-15 six weeks earlier; is that right?

02:05PM 8 A. Yes.

02:05PM 9 Q. And, then, he was asked about these guns -- about the
02:05PM 10 reamers or drills; right?

02:05PM 11 A. Yes.

02:05PM 12 Q. He was asked, Where are they, essentially; right?

02:05PM 13 A. Yes.

02:05PM 14 Q. And he said, Well, they may be there -- he said, "They may
02:05PM 15 be at the house, they were shipped there."

02:05PM 16 Is that what he told him?

02:06PM 17 A. "Roggio stated he was unsure where the reamers and rifling
02:06PM 18 buttons were, because he had a safe and lock box at both his
02:06PM 19 and his parents' house in Stroudsburg, Pennsylvania."

02:06PM 20 Q. All right, so, at this point in time, you knew that these
02:06PM 21 buttons were ordered from Drill Masters, and they were sent to
02:06PM 22 his residence in Pennsylvania; right?

02:06PM 23 A. Yes.

02:06PM 24 Q. And, in fact, he's telling you -- and when you confronted
02:06PM 25 him or when Special Agent O'Donnell confronted him about where

02:06PM 1 they were, he basically said, They're probably in Pennsylvania
02:06PM 2 there. Is that right?

02:06PM 3 A. That was his answer, based on the paragraph, yes.

02:07PM 4 Q. So you had a meeting -- we're getting to that
02:07PM 5 investigative meeting, when you came into the case. You hadn't
02:07PM 6 come into the case until December 16 and sometime in January
02:07PM 7 2017, sitting down with the various agencies for this meeting,
02:07PM 8 and the border search option was discussed. Is that right?

02:07PM 9 A. Yes, I brought it up.

02:07PM 10 Q. All right, you brought it up. Now, at that point in time,
02:07PM 11 January of 2017, Agent Donnelly had received a tip from Drill
02:07PM 12 Masters, he had spoke to people from Drill Masters, he had
02:07PM 13 spoke to Monteforte from Packaging Place, he had spoke to Mr.
02:08PM 14 Roggio in Iraq, there had been search warrants issued by, I
02:08PM 15 guess it was, Agent Dunberg?

02:08PM 16 A. Correct.

02:08PM 17 Q. For these emails from Mr. Roggio, and, in fact, he had
02:08PM 18 already received some of those emails; correct?

02:08PM 19 A. Yes.

02:08PM 20 Q. I think you had mentioned that you were the first Homeland
02:08PM 21 Security agent that had been involved in the case; is that
02:08PM 22 right?

02:08PM 23 A. Correct.

02:08PM 24 Q. But isn't Agent -- isn't Dunberg also a Homeland Security
02:08PM 25 guy?

02:08PM 1 A. No, he's not.

02:08PM 2 Q. What is he, I'm sorry?

02:08PM 3 A. He is with the -- he's a Special Agent for the U.S.

02:08PM 4 Department of Commerce Office of Export Enforcement, Bureau of
02:08PM 5 Industry and Security.

02:08PM 6 Q. Okay.

02:08PM 7 A. They have a similar role in examining and preventing the
02:09PM 8 export of controlled items that appear on the commerce control
02:09PM 9 list.

02:09PM 10 Q. I see. I apologize for that, I don't know what I was
02:09PM 11 thinking when I asked you that.

02:09PM 12 So in other words, at this point in time, during this
02:09PM 13 pow-wow, this investigative meeting, all these things had
02:09PM 14 already occurred; correct?

02:09PM 15 A. Yes.

02:09PM 16 Q. And the decision was made or the choice was made that,
02:09PM 17 perhaps, a border search would be something that should be
02:09PM 18 considered?

02:09PM 19 A. If the opportunity presented itself. What I had proposed
02:09PM 20 was, explained the border search authority capabilities, what
02:09PM 21 it entails, and said if we have the opportunity and we identify
02:09PM 22 that Mr. Roggio is traveling back into the country, that we
02:09PM 23 could refer him to secondary to see if he has anything in his
02:10PM 24 luggage, and, then, specifically, detain the devices for
02:10PM 25 examination.

02:10PM 1 Q. So in other words, you thought that, perhaps, regardless
02:10PM 2 of how he presented himself to primary and regardless of how
02:10PM 3 the secondary interview or examination went, it would be a
02:10PM 4 chance to detain the devices; is that right?

02:10PM 5 A. Based on my review of all case materials and the search
02:10PM 6 warrant findings and the emails within, I believed it was very
02:10PM 7 reasonable to suspect that Mr. Roggio was engaged in some type
02:10PM 8 of illegal export activities, as well as brokerage and service
02:10PM 9 activities in Iraq, without the permission of the Department of
02:10PM 10 State.

02:10PM 11 Q. To seize his devices, is that it?

02:10PM 12 A. To not seize them, to detain them for a border search
02:10PM 13 examination.

02:10PM 14 Q. To detain them, in other words, to actually take them,
02:11PM 15 right, from him, and to have them ultimately forensically
02:11PM 16 examined?

02:11PM 17 A. Correct.

02:11PM 18 Q. Is that right? Did anyone discuss getting a search warrant
02:11PM 19 at that point in time?

02:11PM 20 A. We probably -- we were throwing out all sorts of ideas as
02:11PM 21 to the best courses of action, whatever we were going to do. I
02:11PM 22 explained to them that border search is a lawfully lawful
02:11PM 23 exemption of the Fourth Amendment, and it gives us the
02:11PM 24 opportunity to do a cursory review to see if we can find
02:11PM 25 anything that would substantiate seizing the devices.

02:11PM 1 Q. All right, so in other words -- so the decision was made
02:11PM 2 to not go with the search warrant; is that right?

02:11PM 3 A. Didn't need to, he was -- if he was going to travel and he
02:11PM 4 was going to come from international space into the U.S., he
02:12PM 5 had to cross the border and be examined. During that
02:12PM 6 examination, we have the authority to detain electronic devices
02:12PM 7 and conduct a forensic search of them.

02:12PM 8 Q. Now, you said -- your answer there mentioned forensic
02:12PM 9 search. Earlier, you had said cursory review.

02:12PM 10 A. Well, we don't want to take the chance anymore of -- the
02:12PM 11 old term was fat fingering the phones, because you run the risk
02:12PM 12 of opening the device and altering the device that could
02:12PM 13 possibly be used later down the road as evidence.

02:12PM 14 If you delete something, if you change the format of that
02:12PM 15 device, you substantially change its admissibility in court.
02:12PM 16 By detaining them, the process is, if the individual, in this
02:12PM 17 case Mr. Roggio, provided his passwords, passwords were
02:12PM 18 provided, they were documented, the phones are then taken and
02:13PM 19 they are placed in airplane mode, so that they cannot be
02:13PM 20 remotely activated and deleted. They are then bagged as
02:13PM 21 evidence and submitted and packaged in the FedEx box and sent
02:13PM 22 to me.

02:13PM 23 I make no alterations to the phone, I simply sign for them
02:13PM 24 and then I hand it over to our computer forensics people who
02:13PM 25 are trained in the extraction of data.

02:13PM 1 Q. That's what you did in this case?

02:13PM 2 A. It's what I do in all cases. This is not unique to Mr.
02:13PM 3 Roggio.

02:13PM 4 Q. So you never conducted cursory review of the data on the
02:13PM 5 phone; is that right?

02:13PM 6 A. No, I did. So once the extraction is done by the computer
02:13PM 7 forensics analyst, we're under a clock, basically, we're trying
02:13PM 8 to get this done in an orderly amount of time. I believe
02:13PM 9 policy -- we would like it to be within 30 days, but it doesn't
02:13PM 10 always fall that way, sometimes forensics guys are backed up.

02:14PM 11 So line item -- I forget the sequencing of it -- but as
02:14PM 12 the first device is extracted in its entirety, so we're
02:14PM 13 not -- we do that so that we are not manipulating the phone and
02:14PM 14 changing it whatsoever. That extraction is posted to an
02:14PM 15 internal evidence review system where I can then conduct a
02:14PM 16 cursory review of the data that's there. For me to do a full
02:14PM 17 review of that device would take weeks, if not months.

02:14PM 18 MR. BARTOLAI: Your Honor, may I have a moment?

02:14PM 19 THE COURT: Yes.

02:14PM 20 THE WITNESS: So it is a cursory review that I conducted.
02:14PM 21 I extract -- or based on that review, I'm looking at items
02:15PM 22 that, I think, are of evidentiary value in our case or support
02:15PM 23 the fact that Mr. Roggio is engaged in some sort of illegal
02:15PM 24 activity in Iraq.

02:15PM 25 BY MR. BARTOLAI:

02:15PM 1 Q. So wait, Agent, you're saying that your cursory review of
02:15PM 2 this data, of Mr. Roggio's electronic devices, occurred after
02:15PM 3 the forensic search; is that right?

02:15PM 4 A. Correct, it is an extension of the border search. There is
02:15PM 5 no search, it's border search includes the detention of the
02:15PM 6 devices, the transit to an appropriate area that can
02:15PM 7 forensically examine them, and then my examination.

02:15PM 8 Q. Okay.

02:15PM 9 A. It's an extension of the border, and that's all laid out.

02:15PM 10 Q. All right, so let's talk about the border search and the
02:15PM 11 search of the electronic devices.

02:15PM 12 Do you have -- I asked if the Deputy Courtroom Clerk place
02:16PM 13 in front of you what's been marked as Defendant's Exhibit D, E
02:16PM 14 and F. Do you have them there?

02:16PM 15 A. Yes.

02:16PM 16 Q. All right. Have you ever seen these before?

02:16PM 17 A. No.

02:16PM 18 Q. As part of your training and duties as a Homeland Security
02:16PM 19 Investigator, are you required to know the policies of the
02:16PM 20 Department of Homeland Security, regarding border searches of
02:16PM 21 electronic devices?

02:16PM 22 A. Yes.

02:16PM 23 Q. And do you receive training in that area?

02:16PM 24 A. Yes.

02:16PM 25 Q. On a continuing basis?

02:16PM 1 A. It's on -- maybe not a continuing annual basis, but we do
02:16PM 2 engage in virtual training, as well as periodic law updates
02:16PM 3 when there are changes to a policy.

02:16PM 4 Q. Would you agree that the policy regarding Homeland
02:16PM 5 Security's conducting a border search of an electronic device
02:17PM 6 has changed, since Mr. Roggio's devices were seized?

02:17PM 7 A. Since they've -- I see Exhibits E and F fall outside
02:17PM 8 January 4th of 2018, so this occurred -- whatever these
02:17PM 9 documents are occurred after -- well after Mr. Roggio's border
02:17PM 10 search.

02:17PM 11 Q. Right, and you've never heard of -- you've never heard of
02:17PM 12 these documents that I've placed in front of you, you never had
02:17PM 13 a chance to review them?

02:17PM 14 A. Exhibit E is a CBP Directive, so that would be something
02:17PM 15 internal to CBP and not Homeland Security Investigations, that
02:17PM 16 applies to F, as well, and these are privacy -- Exhibit D is a
02:17PM 17 Privacy Impact Assessment. This is something that would have
02:17PM 18 been done, probably, at the DHS headquarters level, and then
02:18PM 19 I'm sure this is part of or incorporated somewhat in the policy
02:18PM 20 that works its way down to us.

02:18PM 21 But as for looking at that specific, no, I don't believe
02:18PM 22 I've ever -- that does not look familiar to me.

02:18PM 23 Q. All right. Let's talk about what you know about these
02:18PM 24 border searches. Have you ever conducted a border search at the
02:18PM 25 border?

02:18PM 1 A. Let me think of this. Yes. So as part of my job, prior to
02:18PM 2 Counter Proliferations, it involved investigations at the
02:18PM 3 seaport. So a ship that comes into the U.S., the seaport, the
02:18PM 4 airports are functional equivalents of the border.

02:18PM 5 Q. Would you agree with me, as a law enforcement agent at the
02:18PM 6 border, you can inspect an individual and his belongings for,
02:19PM 7 essentially, no reason?

02:19PM 8 A. Yes.

02:19PM 9 Q. You can ask him questions; correct?

02:19PM 10 A. Yes.

02:19PM 11 Q. You can look -- search him; right?

02:19PM 12 A. Correct.

02:19PM 13 Q. His person, his belongings?

02:19PM 14 A. If there is a reason to go into that depth, yes.

02:19PM 15 Q. In other words, his bags?

02:19PM 16 A. There's a number of indicators, you know, that CBP uses as
02:19PM 17 they're evaluating passengers.

02:19PM 18 Q. But you don't need any reason to search an individual at
02:19PM 19 the border; right?

02:19PM 20 A. Based on the law, no.

02:19PM 21 Q. When we talk about these electronic devices, again, I'm
02:19PM 22 asking you regarding the policy of -- you know, the policies
02:19PM 23 for Homeland Security on a border search.

02:19PM 24 MR. HINKLEY: Your Honor, if I may interrupt. I'm going to
02:19PM 25 object to the questions about policy. I don't think it's really

02:19PM 1 relevant for today's proceedings.

02:20PM 2 THE COURT: Well, I'll allow the question, if you can be
02:20PM 3 more specific, Mr. Bartolai. A lot of what you're asking this
02:20PM 4 witness, right now, is permissible, but it's bordering on
02:20PM 5 asking him for legal conclusions and, perhaps, even conclusions
02:20PM 6 on ultimate issues in this case.

02:20PM 7 I'm willing to allow it to a degree, and I'm going to
02:20PM 8 continue to allow you to question the witness, but as far as
02:20PM 9 policy considerations, you've got to narrow your questions,
02:20PM 10 because I'm not even sure that I understand where you're headed
02:20PM 11 here.

02:20PM 12 MR. BARTOLAI: Very good.

02:20PM 13 BY MR. BARTOLAI:

02:20PM 14 Q. So Agent, I can pick up a phone and look at it and inspect
02:20PM 15 it at the border; correct?

02:20PM 16 A. Yes.

02:20PM 17 Q. And that means that you can manually manipulate it, turn
02:20PM 18 it back and forth, make sure -- take the battery out -- I'm not
02:20PM 19 talking about just phones, but any electronic device, and make
02:21PM 20 sure there's not a hidden compartment in there; correct?

02:21PM 21 A. Hidden compartments, there are cell phones disguised as
02:21PM 22 handguns, you can investigate and look and make share there's
02:21PM 23 no explosives.

02:21PM 24 Q. Right, and that is like a manual type of search of the
02:21PM 25 phone itself; correct?

02:21PM 1 A. A physical search, yes.

02:21PM 2 Q. A physical search, you don't have to open the phone for
02:21PM 3 that?

02:21PM 4 A. You can.

02:21PM 5 Q. But you don't have to?

02:21PM 6 A. Well, it would be part of the physical search to make sure
02:21PM 7 that it's active and operates the way a cell phone would.

02:21PM 8 Q. So we will go to the next level then. And you could
02:21PM 9 also -- not only could you manually manipulate it and look at
02:21PM 10 it and examine it, you can actually turn it on; right?

02:21PM 11 A. Yes.

02:21PM 12 Q. And that includes asking the traveler or the owner of the
02:21PM 13 cell phone for his passcode; correct?

02:21PM 14 A. Right.

02:21PM 15 Q. He would provide it to you, and you could open it up and
02:21PM 16 look at it. Right?

02:22PM 17 A. It's up to them whether they want to provide their
02:22PM 18 passcode or not.

02:22PM 19 Q. But if he gives you the passcode, you can certainly look
02:22PM 20 in the phone, right?

02:22PM 21 A. Absolutely, yes.

02:22PM 22 Q. That's all part of your understanding of what can be done
02:22PM 23 at the border; right?

02:22PM 24 A. Yes.

02:22PM 25 Q. Although, you weren't involved in this particular case,

02:22PM 1 with respect to the handling of his devices that night on
02:22PM 2 February 26, 2017, that certainly could have been done, that
02:22PM 3 would have been within the border search authority of the
02:22PM 4 agents there; correct?

02:22PM 5 A. Based on the CBP officer's testimony, if we weren't
02:22PM 6 involved whatsoever, CBP more than likely would have examined
02:22PM 7 his phones.

02:22PM 8 Q. But we know they weren't examined; right?

02:22PM 9 A. No, because the call was already made that we were
02:22PM 10 forensically going to examine those phones, as part of the
02:22PM 11 border search. So we don't want any -- the whole point is, we
02:23PM 12 don't want anybody opening the phones, we want them as is, as
02:23PM 13 they came, placed -- other than opening them up, powering them
02:23PM 14 on, entering the code to make sure that it works, placing the
02:23PM 15 phone into airplane mode, that is the level of manipulation
02:23PM 16 that would be required prior to packaging as evidence and
02:23PM 17 sending it down for the forensics examination to the requesting
02:23PM 18 office.

02:23PM 19 Q. So the determination was made, prior to Mr. Roggio
02:23PM 20 crossing the border, that his devices were going to be detained
02:23PM 21 and forensically examined; correct?

02:23PM 22 A. Correct.

02:23PM 23 Q. So there was no need for anyone to open those phones and
02:23PM 24 search them; correct?

02:23PM 25 A. They weren't opened or searched, they were powered on,

02:23PM 1 activated, verified the codes worked, and the airplane

02:24PM 2 mode -- placed into airplane mode and packaged.

02:24PM 3 Q. Who did that?

02:24PM 4 A. That I don't know, that could have been CBP, it could have

02:24PM 5 been HSI Agent Mundy, I wasn't there, I don't know how the

02:24PM 6 delineation of duties were separated.

02:24PM 7 Q. Did you do that?

02:24PM 8 A. No, I was not in New York at the time.

02:24PM 9 Q. In fact, you were never at the J.F.K. Airport?

02:24PM 10 A. No, I offered to drive up and was told that it was not

02:24PM 11 needed.

02:24PM 12 Q. You were always in Philadelphia regarding this -- during

02:24PM 13 this time?

02:24PM 14 A. Yes.

02:24PM 15 Q. We have seen exhibits offered earlier by -- the reports

02:24PM 16 relative to the border inspection people, Customs and

02:24PM 17 Protection, Government's No. 1 was a report of -- by Mrs.

02:24PM 18 Morales, regarding the interview of Mr. Roggio, that was

02:25PM 19 identified -- the report at the very top said it was generated

02:25PM 20 by Burke, Jeffrey Burke. You would have been able to get that

02:25PM 21 report remotely from Philly?

02:25PM 22 A. Correct.

02:25PM 23 Q. So you didn't have to go there to get that?

02:25PM 24 A. No, I have access to CBP's systems, as part of my normal

02:25PM 25 course of duties with Homeland Security Investigations.

02:25PM 1 Q. So it was, essentially, as easy as someone -- you even
02:25PM 2 provided the bag with the postage to get the phone.

02:25PM 3 A. It's kind of a courtesy, so if J.F.K. is conducting this,
02:25PM 4 and rather than -- so they don't have to incur the expense of
02:25PM 5 shipping, it's customary to provide them with our office FedEx
02:25PM 6 client code, so that the bill is sent to the SAC of
02:25PM 7 Philadelphia, as opposed to New York having to pay for it.

02:25PM 8 That's customary throughout any office that's requesting
02:26PM 9 service at J.F.K. or elsewhere.

02:26PM 10 Q. Now, when did you provide that, that courtesy?

02:26PM 11 A. It would have been that day. As I said, I'm talking with
02:26PM 12 SA Mundy before and after the secondary event, and, you know,
02:26PM 13 providing details and trying to find out, Hey, how'd it go, you
02:26PM 14 know, just get information on how everything went and if there
02:26PM 15 were any problems.

02:26PM 16 Q. Now, earlier, when you testified, I think, at first, you
02:26PM 17 were unsure if you spoke to Agent Mundy?

02:26PM 18 A. My hesitation -- I was trying to -- I wouldn't call SA
02:26PM 19 Mundy directly on my whim to say, Hey, I want a border search.
02:27PM 20 That call is routed -- so I'm talking to my supervisor. I
02:27PM 21 believe, in this case, my supervisor of Counter Proliferations
02:27PM 22 in Philadelphia called up to New York and spoke to the group
02:27PM 23 supervisor of Counter Proliferations there and said, Hey, this
02:27PM 24 is what we're looking to do, what's the best course of action?

02:27PM 25 At some point, I'm provided the name of SA Mundy as my

02:27PM 1 point of contact who is the duty agent. So your request -- I
02:27PM 2 did talk to him, but it wasn't -- there was sequential people
02:27PM 3 that I spoke to. I was trying to craft my answer and you didn't
02:27PM 4 let me finish.

02:27PM 5 Q. I understand. But, now, earlier, as you pointed out, you
02:27PM 6 weren't sure if you talked to him, but now I think it's clear--

02:27PM 7 A. That's not what I said.

02:27PM 8 Q. Okay, but now you've talked to him before and afterwards?
02:27PM 9 Is that what happened?

02:27PM 10 A. Absolutely.

02:27PM 11 Q. Now, you recall speaking to him before the search and
02:27PM 12 afterwards --

02:27PM 13 A. Again, I'm going to go back, you did not let me finish the
02:27PM 14 crafting of my answer. I spoke to him, I have no doubt that I
02:28PM 15 spoke to him both before and after.

02:28PM 16 Q. All right. Do you have any type of memo, any type of note,
02:28PM 17 regarding that that would memorialize that?

02:28PM 18 A. No, it's a general phone call to make sure that -- let me
02:28PM 19 actually -- hold on. So not documenting the phone call, but as
02:29PM 20 part of my report, Government Exhibit 10, on Page 5 of 6,
02:29PM 21 indicates on February 28, "SA Burke received the above items
02:29PM 22 from SA Mundy, confirmed the contents, and secured them pending
02:29PM 23 submission to HSI Philadelphia Forensics Lab."

02:29PM 24 But as for documenting the context of the phone calls, no,
02:29PM 25 that's simply a formality. I want to make sure that they have

02:29PM 1 everything they need because they're doing me the favor. I
02:29PM 2 would much prefer to have been up there to do it, myself, but
02:29PM 3 there was no need for me to waste Government time and resources
02:29PM 4 when it could be done just as easily by SA Mundy.

02:29PM 5 Q. Now, you just mentioned Government Exhibit 10, and you
02:29PM 6 noted on Page 5;

02:29PM 7 "On February 28, 2017, SA Burke received the above items
02:29PM 8 from SA Mundy, confirmed the contents and secured them pending
02:30PM 9 submission to the HSI Philadelphia Forensic Lab". That wasn't a
02:30PM 10 phone call, that was that pre-bagged --

02:30PM 11 A. Correct, but that's a reference to SA Mundy within my
02:30PM 12 report.

02:30PM 13 Q. But your notes don't reference any phone calls before and
02:30PM 14 after; right?

02:30PM 15 A. As far as I'm aware, no, and I don't know that I would, in
02:30PM 16 the normal course of business, make that an addendum to a
02:30PM 17 report -- make that part of a report. That's spelled out in the
02:30PM 18 CBP detention forms as Mundy is the seizing agent, and I'm just
02:30PM 19 coordinating with him to get that stuff down to me.

02:30PM 20 Q. That's really all that is done -- that's really all that
02:30PM 21 Agent Mundy was, was the seizing agent; right?

02:30PM 22 A. Correct, he's just standing in for me.

02:30PM 23 Q. He had no discretion regarding whether or not to seize
02:31PM 24 that?

02:31PM 25 A. No, not at all. It's my decision as a case agent to do it,

02:31PM 1 and he is simply making it happen for me.

02:31PM 2 Q. Had you put out a hit -- you talked a little bit about
02:31PM 3 that CTR Lookout.

02:31PM 4 A. No, I did not do a CTR Lookout, that is a CBP designation,
02:31PM 5 which, I believe, based on Officer Aurelia's comments was
02:31PM 6 something that CBP assigns to travelers from Iraq. My lookout
02:31PM 7 is from an internal case system within HSI that links to TECS,
02:31PM 8 which is the CBP database and allows me to monitor a person's
02:31PM 9 travel -- and not a person, a subject of an investigation.

02:32PM 10 At this point, I am involved in the investigation, Mr.
02:32PM 11 Roggio is a subject of the investigation, and we reasonably
02:32PM 12 suspect that he is involved in weapons manufacturing and
02:32PM 13 illegal exportation of goods to Iraq without getting the
02:32PM 14 appropriate licensing.

02:32PM 15 I enter that record, I tag it, initially, as a silent hit
02:32PM 16 because I don't want anybody doing anything with him that could
02:32PM 17 jeopardize the overall investigation. When it becomes apparent
02:32PM 18 that he is going to travel, and it's confirmed, at that point,
02:32PM 19 I'm changing the silent hit to what is -- what you're referring
02:32PM 20 to as a one-day lookout .

02:32PM 21 The CBP -- what was the designation? CTR? That is not a
02:33PM 22 designation that I -- that's a CBP issue, and what that tells
02:33PM 23 me is, is that, if I was not involved in this case whatsoever,
02:33PM 24 CBP had already shown interest in Mr. Roggio's travel, based on
02:33PM 25 whatever metrics they were looking at, and they were going to

02:33PM 1 secondary him, regardless of my involvement, based on his
02:33PM 2 travel from Iraq.

02:33PM 3 Q. Make no mistake about it, you arranged for him to have a
02:33PM 4 secondary inspection; correct?

02:33PM 5 A. I had an active record in to have him secondaried,
02:33PM 6 absolutely.

02:33PM 7 Q. In other words, when you say a silent hit --

02:33PM 8 A. When I designate a subject's record in an investigation
02:33PM 9 that I believe is potentially traveling into the U.S. or out of
02:33PM 10 the U.S., maybe they're a fugitive, maybe I suspect them of
02:33PM 11 carrying contraband, maybe they're carrying money, maybe
02:33PM 12 they're carrying narcotics, maybe they're a material witness to
02:34PM 13 an investigation, if I have an opportunity to grab them at the
02:34PM 14 airport and talk to them and interview them, absolutely, it's
02:34PM 15 an invaluable investigative technique that I use in almost all
02:34PM 16 my cases.

02:34PM 17 Q. But this is different, though. What happened here was you
02:34PM 18 entered a subject matter record within your case management
02:34PM 19 system that let you know he was coming into the country;
02:34PM 20 correct?

02:34PM 21 A. Correct.

02:34PM 22 Q. And that was a silent hit; correct?

02:34PM 23 A. Correct.

02:34PM 24 Q. And then you took action. When you found out that he was
02:34PM 25 coming into the country, you arranged for his electronic

02:34PM 1 devices to be seized and for him to undergo a secondary
02:34PM 2 interview; correct?

02:34PM 3 MR. HINKLEY: Your Honor, I'm going to object. This has
02:34PM 4 been asked and answered a number of times.

02:34PM 5 MR. BARTOLAI: I don't think it has, Judge, he hasn't
02:34PM 6 answered this question. It's a simple yes or no answer.

02:34PM 7 THE COURT: Go ahead.

02:34PM 8 THE WITNESS: Ask the question again, please.

02:34PM 9 THE COURT: Read it back, Kristin.

02:34PM 10 (At this time the reporter read back the referred-to
02:34PM 11 portion of the record.)

02:34PM 12 THE REPORTER: "QUESTION: And then you took action. When
02:34PM 13 you found out that he was coming into the country, you arranged
02:34PM 14 for his electronic devices to be seized and for him to undergo
02:34PM 15 a secondary interview; correct?"

02:35PM 16 THE WITNESS: That is correct. As I explained before, when
02:35PM 17 we got the confirmation that he, indeed, was traveling back to
02:35PM 18 the United States, that silent hit, I then change to a one-day
02:35PM 19 lookout, so that we don't miss him and he doesn't slip through,
02:35PM 20 because, unfortunately, if you -- the one-day lookout is just
02:35PM 21 kind of an almost, Let's highlight it and just make sure that
02:35PM 22 it doesn't slip through, puts everybody on notice, CBP,
02:35PM 23 especially, and prior to doing that, I'm consulting with the
02:36PM 24 investigative team.

02:36PM 25 Hey, we have this opportunity, you know, this is what I'd

02:36PM 1 I like to do, and we went forward and I conducted it.

02:36PM 2 BY MR. BARTOLAI:

02:36PM 3 Q. So are you saying that after you determined that he was
02:36PM 4 coming into the country but prior to having him
02:36PM 5 secondarily-inspected and his devices seized, you consulted
02:36PM 6 with the team?

02:36PM 7 A. Absolutely. I'm not going to do something on my own
02:36PM 8 without, you know, the team knowing what I'm doing. I didn't
02:36PM 9 take over this investigation, I'm not running this
02:36PM 10 investigation, it's a team effort, and just the same way I
02:36PM 11 wouldn't go execute a search warrant on Mr. Roggio's house
02:36PM 12 without consulting the investigative team.

02:36PM 13 Q. All right, now, let's talk about -- so these devices,
02:36PM 14 ultimately, are seized from Mr. Roggio on February 26, 2017,
02:37PM 15 and they are sent to you; is that right?

02:37PM 16 A. Correct.

02:37PM 17 Q. And when you look at Government's Exhibit 5, it
02:37PM 18 highlights -- it picks up, basically, on Paragraph 54, if you
02:37PM 19 could take a look at that. You actually received these items
02:37PM 20 from Special Agent Mundy; right?

02:37PM 21 A. Yes.

02:37PM 22 Q. And you secured them -- when I say, these items, I mean,
02:37PM 23 the electronic devices; correct?

02:37PM 24 A. You're on Paragraph 54?

02:37PM 25 Q. Yes.

02:37PM 1 A. Yes, February 28 is when I received them --

02:37PM 2 Q. You received them --

02:37PM 3 A. -- in the FedEx package.

02:37PM 4 Q. -- on March 1st, the next day, you submitted them to the
02:37PM 5 Forensic Agent Green --

02:37PM 6 A. Correct.

02:37PM 7 Q. -- who began a forensic examination of the items; right?

02:38PM 8 A. Yes.

02:38PM 9 Q. And then between the time you received those items until
02:38PM 10 the time you gave them to Agent Green, you never performed a
02:38PM 11 cursory inspection?

02:38PM 12 A. Absolutely, it was simply taking them out of the FedEx
02:38PM 13 box, make sure everything was accounted for, sign the custody
02:38PM 14 sheet that I had received them, send that -- a copy of that
02:38PM 15 sheet back to SA Mundy for his records, and then I'm making
02:38PM 16 sure that everything is exactly the way it's supposed to be. I
02:38PM 17 believe I would have submitted them that day to SA Green, but
02:38PM 18 he was not in, he was not available to take custody that day,
02:38PM 19 so these would have been locked away and secured.

02:38PM 20 I come in the following day, I take custody of them again,
02:38PM 21 I walk them over to the CFA lab and turn them over to Special
02:38PM 22 Agent Green.

02:38PM 23 Q. Do you know the difference between a cursory investigation
02:39PM 24 of an electronic device and a forensic examination of an
02:39PM 25 electronic device?

02:39PM 1 A. I know what my definition is.

02:39PM 2 Q. Do you know the Homeland Security definition?

02:39PM 3 A. I don't know that there's an official definition.

02:39PM 4 Q. If I were to say that the difference between a casual
02:39PM 5 inspection and a forensic examination is that, in a forensic
02:39PM 6 examination, a device is attached to an outside source that
02:39PM 7 would examine it. Would you agree with me?

02:39PM 8 A. Yes.

02:39PM 9 Q. So that's the difference that Mr. Green would use, he
02:39PM 10 would use tools, software, etc., to extract data from these
02:39PM 11 devices; correct?

02:39PM 12 A. Right, and that's all we do anymore.

02:39PM 13 Q. Now, this -- when we hear about travelers and their phones
02:39PM 14 being detained and a copy being made and them continuing on
02:40PM 15 their way with their phone, that doesn't happen anymore?

02:40PM 16 A. It depends on the phone. So Smart phones, it takes -- it
02:40PM 17 depends on the phone and how much data there is, and it also
02:40PM 18 depends on how much time we have with the passenger.

02:40PM 19 If that passenger is on a four-hour layover, there's a
02:40PM 20 very good chance that they might agree to do an extraction
02:40PM 21 on-site.

02:40PM 22 Q. And they can do that; right?

02:40PM 23 A. They have the equipment up there, the same equipment that
02:40PM 24 we have in Philadelphia they have up there.

02:40PM 25 Q. So in other words, and that wasn't done, there was no

02:40PM 1 extraction done there?

02:40PM 2 A. Correct.

02:40PM 3 Q. Okay. And likewise -- and they could always make a copy of
02:40PM 4 the device?

02:40PM 5 A. Well, a copy is the forensic -- that's the image being
02:40PM 6 extracted.

02:40PM 7 Q. Right, okay, but none of that was done, the phones were
02:40PM 8 actually seized from Mr. Roggio?

02:40PM 9 A. They were detained --

02:40PM 10 THE COURT: I think I understand what happened here. Let's
02:41PM 11 move on.

02:41PM 12 MR. BARTOLAI: Very good.

02:41PM 13 BY MR. BARTOLAI:

02:41PM 14 Q. You referenced -- when we were talking about, earlier
02:41PM 15 -- later in your testimony you mentioned Government's Exhibit
02:41PM 16 No. 12, I think that you had indicated, correct me if I'm
02:41PM 17 wrong, that that was a cursory search of the data on Mr.
02:41PM 18 Roggio's device?

02:41PM 19 A. Now, that report, 12, is the results of the search warrant
02:41PM 20 which we had applied for and received on March 21.

02:41PM 21 Q. All right, so No. 12 was after the search warrant, right,
02:41PM 22 the results?

02:41PM 23 A. Correct, yes.

02:41PM 24 Q. And what happened here was the devices were seized --

02:42PM 25 A. Detained.

02:42PM 1 Q. -- on February 26 of 2017, they were forensically
02:42PM 2 examined, and then the search warrant was issued or was
02:42PM 3 obtained to further examine them; correct?

02:42PM 4 A. Once our border search of the detained devices showed that
02:42PM 5 there was evidence, in relation to the crime that we reasonably
02:42PM 6 suspected Mr. Roggio of committing, we made the decision, in an
02:42PM 7 overabundance of caution, to apply for search warrants then to
02:42PM 8 officially seize the devices.

02:42PM 9 And this was -- we were kind of, if I'm correctly
02:42PM 10 recalling the change to border search policy, we were ahead of
02:42PM 11 our time, because we did not need, at the time, we did not need
02:42PM 12 to apply for search warrants.

02:43PM 13 BY MR. BARTOLAI:

02:43PM 14 Q. I'm going to show you Government's No. 9. This is an
02:43PM 15 invoice from OML Global; correct?

02:43PM 16 A. Yes.

02:43PM 17 Q. As a result of your -- as a result of the search warrants
02:43PM 18 on Mr. Roggio's email accounts, this device, this invoice,
02:43PM 19 Government Exhibit 9 was discovered; is that right?

02:43PM 20 A. Yes, but let's be specific. This was recovered during the
02:43PM 21 search warrants prior to the border search that were conducted
02:43PM 22 by SA Dunberg of Commerce.

02:43PM 23 Q. That's right, okay, very good. It mentions here, a gas
02:44PM 24 ring, M4 bolt gas ring, right, firing pin retainer; correct?

02:44PM 25 A. Yes.

02:44PM 1 Q. You testified, earlier, regarding this, haven't you?

02:44PM 2 A. Yes.

02:44PM 3 Q. And as you pointed out, this was the subject of search

02:44PM 4 warrants being executed on those yahoo accounts; right?

02:44PM 5 A. Correct.

02:44PM 6 Q. Do you have anything that would show that these items were

02:44PM 7 shipped to Iraq?

02:44PM 8 MR. HINKLEY: Your Honor, I'm going to object to the

02:44PM 9 question, unless he has a time frame. It would only be relevant

02:44PM 10 if the information was known to the investigation prior to.

02:44PM 11 THE COURT: Sustained. You'll have to reformulate your

02:44PM 12 question.

02:44PM 13 BY MR. BARTOLAI:

02:44PM 14 Q. We see, when we look at Government's Exhibit 9, that there

02:44PM 15 was items ordered from Mr. Roggio from OML Global that included

02:44PM 16 a bolt gas ring and firing pin retainer; correct?

02:45PM 17 A. Correct.

02:45PM 18 Q. Nowhere in Government's Exhibit 5, the search warrant,

02:45PM 19 does it mention where these items were shipped, does it?

02:45PM 20 A. Correct.

02:45PM 21 Q. So, in fact, all we know is that they were ordered and no

02:45PM 22 one knows where they were shipped to; correct?

02:45PM 23 A. Based on that document, correct.

02:45PM 24 Q. And I think you point out that, at the time that he had

02:45PM 25 ordered them, he was in Iraq; is that it?

02:45PM 1 A. Based on that document, correct.

02:45PM 2 MR. BARTOLAI: May I have a moment, Judge?

02:45PM 3 THE COURT: Yes.

02:48PM 4 MR. BARTOLAI: Judge, may I have a short recess?

02:48PM 5 THE COURT: How short?

02:48PM 6 MR. BARTOLAI: Five minutes, Judge?

02:48PM 7 THE COURT: Five minutes.

02:48PM 8 (At this time a brief recess was taken.)

02:54PM 9 THE COURT: Mr. Bartolai?

02:54PM 10 MR. BARTOLAI: Yes, Your Honor, thank you. I have nothing
02:54PM 11 further.

02:54PM 12 THE COURT: Redirect?

02:54PM 13 MR. HINKLEY: Just a few questions, Your Honor.

02:54PM 14 REDIRECT EXAMINATION

02:54PM 15 BY MR. HINKLEY:

02:54PM 16 Q. Mr. Burke, on cross examination, Mr. Bartolai asked what
02:54PM 17 the crimes were that were under investigation, and you
02:54PM 18 indicated that there were export violations, obviously, but you
02:55PM 19 also mentioned something called Defense Services. I wonder if
02:55PM 20 you could explain what you mean by that.

02:55PM 21 A. Defense Services, if I want to go to a foreign country and
02:55PM 22 manufacture weapons, providing a service to a foreign
02:55PM 23 government, I have to obtain permission from the Department of
02:55PM 24 State, I have to be licensed, and I have to get approvals to
02:55PM 25 conduct those activities; be it, training personnel or

02:55PM 1 manufacturing, any service that could be construed as a defense
02:55PM 2 service, meaning, you know, military-type defense service, you
02:55PM 3 have to be appropriately licensed and have the permissions to
02:55PM 4 do so.

02:55PM 5 Q. Was there a records check done to determine whether or not
02:55PM 6 Mr. Roggio had such licensure or permission to do that?

02:55PM 7 A. Yes, I submitted license determinations and license
02:56PM 8 history requests to the Department of State, Defense Director
02:56PM 9 of Trade Controls that issues such licenses for Mr. Roggio,
02:56PM 10 aliases, dates of birth, all the identifiers that I have, and
02:56PM 11 we received -- no licenses were ever issued,

02:56PM 12 Q. Was this all done prior to February 26 of 2017, the day
02:56PM 13 that the Defendant was traveling back to the United States?

02:56PM 14 A. Yes.

02:56PM 15 MR. HINKLEY: No further questions, Your Honor.

02:56PM 16 THE COURT: Recross?

02:56PM 17 RECROSS EXAMINATION

02:56PM 18 BY MR. BARTOLAI:

02:56PM 19 Q. Now, you know that Mr. Roggio has a background in firearms
02:56PM 20 manufacturing?

02:56PM 21 A. I know he has some type of background in firearms
02:56PM 22 manufacturing, yes.

02:56PM 23 Q. You know that he had a tool shop or a manufacturing shop
02:57PM 24 in Fayetteville, North Carolina?

02:57PM 25 A. Had, back in, I believe, 2009.

02:57PM 1 Q. You know he had that, right?

02:57PM 2 A. Yes.

02:57PM 3 Q. And you know that he was also involved in another venture
02:57PM 4 that proposed -- that never launched, Rebel Arms, which was
02:57PM 5 also going to manufacture firearms.

02:57PM 6 A. Yes, I'm familiar with that, as well.

02:57PM 7 Q. As I said, it never launched; correct?

02:57PM 8 A. Correct.

02:57PM 9 MR. BARTOLAI: Nothing further.

02:57PM 10 THE COURT: Thank you, Agent. You can step down.

02:57PM 11 MR. HINKLEY: We have no further witnesses, Your Honor.

02:57PM 12 THE COURT: Very well.

02:57PM 13 MR. BARTOLAI: Judge, if I understand right, there's two
02:57PM 14 witnesses that I subpoenaed that are present, Vetrano and Agent
02:57PM 15 Fenley Augustine, so we could call them, Judge. We will call
02:57PM 16 Mr. Augustine first.

02:58PM 17 THE COURT: Is he sitting outside?

02:58PM 18 MR. BARTOLAI: Yes.

02:58PM 19 F E N L E Y A U G U S T I N E IS CALLED, AND HAVING BEEN
02:58PM 20 DULY SWORN, TESTIFIED AS FOLLOWS:

02:59PM 21 THE CLERK: Please state and spell your name for the
02:59PM 22 record.

02:59PM 23 THE WITNESS: Felney Augustine F-E-L-N-E-Y,
02:59PM 24 A-U-G-U-S-T-I-N-E.

02:59PM 25 THE CLERK: Thank you. You may be seated.

02:59PM 1 DIRECT EXAMINATION

02:59PM 2 BY MR. BARTOLAI:

02:59PM 3 Q. Good afternoon, Mr. Augustine.

02:59PM 4 A. Good afternoon.

02:59PM 5 Q. My name is Gino Bartolai, I represent Ross Roggio today.

02:59PM 6 I subpoenaed you, and I appreciate you showing up. Can you tell
02:59PM 7 us where you're employed?

02:59PM 8 A. I'm employed at Customs and Border Protection over at
02:59PM 9 J.F.K. Airport.

02:59PM 10 Q. How long have you been employed there?

02:59PM 11 A. Since 2015.

02:59PM 12 Q. When?

02:59PM 13 A. 2015.

02:59PM 14 Q. 2015?

02:59PM 15 A. Yes, sir.

02:59PM 16 Q. What's your primary function there?

02:59PM 17 A. There are many functions that are primary. I assist with
03:00PM 18 passenger assistance, as far as checking documents, anything
03:00PM 19 like that, also, I can escort passengers over to the secondary
03:00PM 20 office, as well.

03:00PM 21 Q. Okay. Were you working on February 26, 2017, if you
03:00PM 22 recall?

03:00PM 23 A. Apparently, I was.

03:00PM 24 Q. So your recollection of the specifics of some of these
03:00PM 25 events is questionable?

03:00PM 1 A. As far as the procedure, I am familiar, yes.

03:00PM 2 Q. You're familiar with that?

03:00PM 3 A. Yes, sir.

03:00PM 4 Q. When you look at the individual seated to my right, Mr.

03:00PM 5 Roggio --

03:00PM 6 A. I don't know.

03:00PM 7 Q. You have no idea; right?

03:00PM 8 A. No.

03:00PM 9 Q. Were you ever given a report to review, prior to your

03:00PM 10 testimony?

03:00PM 11 A. A report? I have seen a Secondary Officer's Statement,

03:00PM 12 that's correct.

03:00PM 13 Q. I'm sorry, what?

03:00PM 14 A. I have seen a Secondary Officer's statement, yes.

03:01PM 15 Q. You saw her report?

03:01PM 16 A. As far as, pretty much what --

03:01PM 17 Q. To review it?

03:01PM 18 A. Yes, the background, as far as what happened that day and

03:01PM 19 why I'm here.

03:01PM 20 Q. All right, after reviewing that report, can you say with

03:01PM 21 any certainty whether or not you were working that day?

03:01PM 22 A. No, I can't.

03:01PM 23 Q. You still can't?

03:01PM 24 A. No.

03:01PM 25 Q. Typically, you do primary inspections; is that right?

03:01PM 1 A. Yes, sir.

03:01PM 2 Q. That means that you would be the first person that a
03:01PM 3 traveler would meet when coming into the country?

03:01PM 4 A. One of the first people, yes, sir.

03:01PM 5 Q. And you don't recall, specifically, that day meeting Mr.
03:01PM 6 Roggio?

03:01PM 7 A. No, sir, I don't.

03:01PM 8 Q. If you were to refer an individual to secondary -- for
03:01PM 9 secondary inspection, what would be some of the reasons,
03:01PM 10 typically, that you would do so?

03:01PM 11 A. It could be a number of reasons. It could range from,
03:01PM 12 there might be a similar name in the system, as far as you're
03:01PM 13 being referred so to be verified in the office, it could be
03:02PM 14 there is a system lookout, what that might be specific to, I am
03:02PM 15 not too sure, since the secondary officer would then go in
03:02PM 16 detail with the passenger.

03:02PM 17 Q. Let's talk about that, because I know you don't recall,
03:02PM 18 specifically, what happened here, when you encountered Mr.
03:02PM 19 Roggio; correct?

03:02PM 20 A. No.

03:02PM 21 Q. But if there was a system alert -- how did you describe
03:02PM 22 it?

03:02PM 23 A. The system alert?

03:02PM 24 Q. Yes.

03:02PM 25 A. So if I'm a primary officer, the system -- I would then

03:02PM 1 get a notification that this individual needs to go through
03:02PM 2 additional screening in the office.

03:02PM 3 Q. All right, so that has nothing to do with you?

03:02PM 4 A. No, it does not, no.

03:02PM 5 Q. If you're there as a primary and you see someone, you have
03:02PM 6 an idea something might be wrong, you could refer them,
03:02PM 7 yourself, to secondary; right?

03:02PM 8 A. I can also do that, yes.

03:02PM 9 Q. And that's discretionary on your part; correct?

03:02PM 10 A. It is, yes, sir.

03:02PM 11 Q. Even if you thought this was -- there was no issues, with
03:02PM 12 respect to this person, regarding admissibility, etc., if that
03:02PM 13 alert is in the system, they're going to get sent to secondary?

03:03PM 14 A. That is the procedure.

03:03PM 15 Q. And that procedure is followed all the time?

03:03PM 16 A. Yes.

03:03PM 17 Q. Are they escorted from there to secondary?

03:03PM 18 A. Yes, sir.

03:03PM 19 Q. Do you recall -- have you ever -- do you know Agent
03:03PM 20 Morales who testified earlier?

03:03PM 21 A. When I saw the face, I was familiar.

03:03PM 22 MR. BARTOLAI: That's all I have, Judge.

03:03PM 23 THE COURT: Any questions?

03:03PM 24 MR. HINKLEY: No, Your Honor. Thank you.

03:03PM 25 THE COURT: Thank you, Mr. Augustine. You can step down.

03:03PM 1 Thank you.

03:03PM 2 MR. HINKLEY: May he be dismissed, Your Honor?

03:03PM 3 THE COURT: Yes, he may.

03:03PM 4 MR. HINKLEY: Thank you, sir.

03:03PM 5 MR. BARTOLAI: So, now, we have Special Agent Douglas

03:03PM 6 Vetrano, he's an FBI agent.

03:03PM 7 D O U G L A S V E T R A N O IS CALLED, AND HAVING BEEN

03:03PM 8 DULY SWORN, TESTIFIED AS FOLLOWS:

03:05PM 9 THE CLERK: Please state and spell your name for the

03:05PM 10 record.

03:05PM 11 THE WITNESS: Douglas A. Vetrano, Douglas, one S, Anthony,

03:05PM 12 and Vetrano, V-E-T-R-A-N-O.

03:05PM 13 THE CLERK: Thank you. You may be seated.

03:05PM 14 DIRECT EXAMINATION

03:05PM 15 BY MR. BARTOLAI:

03:05PM 16 Q. Good afternoon, Agent.

03:05PM 17 A. Good afternoon.

03:05PM 18 Q. Gino Bartolai is my name, I'm an attorney for Mr. Roggio.

03:05PM 19 You were subpoenaed today, and thank you for coming.

03:05PM 20 I'm going to direct your attention to an incident that

03:05PM 21 occurred on February 26, 2017 at J.F.K. Airport involving a

03:05PM 22 secondary inspection. Do you recall any specific incident that
03:05PM 23 day?

03:05PM 24 A. I do not recall a specific incident that day.

03:05PM 25 Q. You know that you were subpoenaed, and have you had the

03:06PM 1 occasion to speak with anybody, perhaps, why you were
03:06PM 2 testifying today?

03:06PM 3 A. Yes, I spoke with some people about why I was testifying,
03:06PM 4 and I read some material about the secondary inspection that
03:06PM 5 you are referring to.

03:06PM 6 Q. All right, so you had, prior to testifying, you had a
03:06PM 7 chance to look at one of the Customs and Border Protection
03:06PM 8 reports, regarding the secondary inspection?

03:06PM 9 A. Yes.

03:06PM 10 Q. Did it refresh your recollection, in any way?

03:06PM 11 A. Not really.

03:06PM 12 Q. The man seated to my right, Ross Roggio, would you know
03:06PM 13 him? Does looking at him recall any of your memory regarding
03:06PM 14 that incident?

03:06PM 15 A. No.

03:06PM 16 Q. All right. From looking at that report, the reports that
03:06PM 17 you looked at earlier or prior, can you say, with certainty,
03:06PM 18 that -- or are you aware that you were working on February 26,
03:06PM 19 2017?

03:06PM 20 A. Yes.

03:06PM 21 Q. All right. When you work -- and you recall the
03:07PM 22 circumstance of you being present at this secondary inspection
03:07PM 23 on that date. Why, typically, are you there? What is that
03:07PM 24 about?

03:07PM 25 A. So, typically, as a Special Agents assigned to the Joint

03:07PM 1 Terrorism Task Force of the FBI at the airport, we have what we
03:07PM 2 call a duty agent rotation, where we are on call for one week
03:07PM 3 at a time, and during that particular day, I was the duty
03:07PM 4 agent, and that's the only reason why I can think of why I was
03:07PM 5 there.

03:07PM 6 Q. All right, so in other words, this was your week?

03:07PM 7 A. Yes.

03:07PM 8 Q. This was your week, and here you are, now, in Scranton,
03:07PM 9 Pennsylvania, with a subpoena. Is that right?

03:07PM 10 A. Yes.

03:07PM 11 Q. And you really have no recollection of what happened?

03:07PM 12 A. No.

03:07PM 13 Q. Would you have been in the room during this secondary
03:07PM 14 inspection interview?

03:07PM 15 A. I might have.

03:08PM 16 Q. Would you have been dressed in plain clothes, typically,
03:08PM 17 or?

03:08PM 18 A. Typically, I'm dressed in plain clothes, yes.

03:08PM 19 Q. Would you have a service weapon with you?

03:08PM 20 A. Yes.

03:08PM 21 Q. A pistol, perhaps?

03:08PM 22 A. Yes.

03:08PM 23 Q. Concealed, is that right?

03:08PM 24 A. Yes.

03:08PM 25 Q. It would be concealed. Do you know Homeland Security

03:08PM 1 Special Agent Mundy?

03:08PM 2 A. Not personally.

03:08PM 3 Q. I mean, do you recall ever meeting him before?

03:08PM 4 A. No. Today, when I saw him, I do not recall meeting him
03:08PM 5 prior.

03:08PM 6 Q. Do you recall ever speaking with any of these guys on the
03:08PM 7 Government's side, Special Agent Donnelly or Homeland Security
03:08PM 8 Investigator Burke?

03:08PM 9 A. No.

03:08PM 10 Q. You wouldn't be able to recollect any conversations you
03:08PM 11 had with them that day or previous to it; is that right?

03:08PM 12 A. Correct.

03:08PM 13 MR. BARTOLAI: Thank you. I have no further questions.

03:08PM 14 MR. HINKLEY: No questions, Your Honor.

03:08PM 15 THE COURT: Thank you, Agent Vetrano. You can step down and
03:09PM 16 you're excused.

03:09PM 17 THE WITNESS: Thank you, Your Honor.

03:09PM 18 MR. BARTOLAI: May I have a moment, Judge?

03:09PM 19 THE COURT: Yes.

03:09PM 20 MR. BARTOLAI: That's all we have, Judge.

03:09PM 21 THE COURT: All right, let's talk about how we proceed from
03:09PM 22 here. Is it the parties' wishes, respectively, to submit
03:09PM 23 post-hearing briefs?

03:09PM 24 MR. BARTOLAI: If I may, Judge, yes, I think so. I would
03:09PM 25 like to, of course, get a copy of the transcript and submit

03:09PM 1 briefs post. I think it's also been raised once before, as the
03:09PM 2 Court knows, we had filed a Motion to Continue this matter
03:09PM 3 pending seeing what happens with respect to this Alasad
03:10PM 4 Petition for Writ of Certiori that's been filed. And I think
03:10PM 5 that that certainly is a consideration of ours, as well, so.
03:10PM 6 Having said that, I don't know what Mr. Hinkley's position is.

03:10PM 7 THE COURT: Mr. Hinkley, what's the Government's view as to
03:10PM 8 how to proceed?

03:10PM 9 MR. HINKLEY: I'm happy to file a post-hearing brief, if
03:10PM 10 the Court feels it's necessary. I don't know that it is. This
03:10PM 11 was briefed pretty thoroughly, and the evidence is fairly
03:10PM 12 narrow, but we are certainly happy to do that, if the
03:10PM 13 Court -- if it would aid the Court's decision.

03:10PM 14 In regards to Alasad, I'd like to think about that more,
03:10PM 15 but off the top of my head, it seems to me we should probably
03:10PM 16 learn whether the Supreme Court will take that decision up
03:11PM 17 fairly quickly, and if it does take it up, I think, I would
03:11PM 18 probably want to give some thought to whether or not, given the
03:11PM 19 facts and circumstances here, whether a decision would really
03:11PM 20 impact the Court . And I say that off the top of my head for a
03:11PM 21 couple reasons.

03:11PM 22 Alasad seems to comport or comply with the various Circuit
03:11PM 23 decisions, in regards to the level of suspicion needed to
03:11PM 24 search items, as it happened here. And here we had that, but we
03:11PM 25 have also got a search warrant, which would alleviate any -- at

03:11PM 1 least, in our view, and I understand the Defense may have a
03:11PM 2 different view of that -- would alleviate any decision that the
03:12PM 3 Supreme Court might make, because I think we have a belt and
03:12PM 4 suspenders-type of approach here, so I hate to see this case
03:12PM 5 further delayed for a reason, which, given the facts of this
03:12PM 6 case, probably, don't matter that much.

03:12PM 7 But I'm certainly happy to wait and see whether cert is
03:12PM 8 granted, and if it is, then, maybe, we can have a discussion at
03:12PM 9 that point whether it really is necessary to wait for the
03:12PM 10 Supreme Court to speak.

03:12PM 11 THE COURT: Well, apparently, from my hearing, there are
03:12PM 12 two approaches to this issue of whether the Supreme Court will
03:12PM 13 grant certiorari in Alasad.

03:12PM 14 One would be for the parties to obtain the transcript and
03:12PM 15 brief this issue after you receive the transcript. The other
03:13PM 16 would be wait to submit your briefs until after the Supreme
03:13PM 17 Court determines whether or not it's going to grant the writ.
03:13PM 18 Alasad certainly raises issues that are germane to our case,
03:13PM 19 but I would not say it's on all fours with what's before me,
03:13PM 20 but it may be useful. I guess it's a question of timing more
03:13PM 21 than anything else.

03:13PM 22 It seems to me that, under the case law that's come out of
03:13PM 23 the Third Circuit, although, its most recent case is a Federal
03:13PM 24 Appendix case of 2010, St. Vallier, but I'm fully aware of what
03:13PM 25 the Circuit has done here. I'm also aware of the Fourth and the

03:13PM 1 Seventh and the Ninth. I think the matter could be briefed
03:14PM 2 without waiting for the decision as to whether cert will be
03:14PM 3 granted, but if it is granted, I'd certainly give you an
03:14PM 4 opportunity, then, to decide whether we should wait further.

03:14PM 5 But either way, I'm willing to accommodate the parties
03:14PM 6 here. There's delay involved here, to the extent we want to
03:14PM 7 respect the fact that there's a pending Motion for Cert one way
03:14PM 8 or the other. So how would you like to proceed?

03:14PM 9 I think -- in fact, I'll submit to you that each of you
03:14PM 10 can certainly write your briefs without having to heavily rely
03:14PM 11 on Alasad.

03:14PM 12 MR. HINKLEY: I agree with that, I think we should go ahead
03:14PM 13 and brief this.

03:14PM 14 THE COURT: Okay. If it turns out that the Supreme Court
03:14PM 15 grants the Petition for Cert, then, we'll re-visit the issue.
03:15PM 16 I think that's the best way to do it.

03:15PM 17 So how much time -- these will not be simultaneous briefs.
03:15PM 18 So how are you going to handle this? In the past, at this
03:15PM 19 stage, I've had Defense counsel submit their brief and the
03:15PM 20 Government respond and vice versa. So have you discussed this,
03:15PM 21 at all, between yourselves?

03:15PM 22 MR. HINKLEY: No. Historically, when I've had cases like
03:15PM 23 this, the transcript is prepared, the Defense writes a brief,
03:15PM 24 and then the Government responds from that, and, usually, it's
03:15PM 25 a few weeks between each.

03:15PM 1 THE COURT: That's been my general experience, with a few
03:15PM 2 exceptions. Is that acceptable to you?

03:15PM 3 MR. BARTOLAI: I could get the transcript, Judge, and have
03:15PM 4 the briefs due within 30 days after receipt of the transcript.
03:15PM 5 I think that's a timetable.

03:15PM 6 THE COURT: If you think you need 30 days, I'm not going to
03:15PM 7 tell you no. And then you'll have -- if you want 30 after that,
03:15PM 8 you can.

03:16PM 9 MR. HINKLEY: How about if you give me that, but in all
03:16PM 10 likelihood, I won't take that long to get it done.

03:16PM 11 THE COURT: All right. So after the transcript is provided
03:16PM 12 to counsel, Mr. Bartolai will have 30 days after receipt to
03:16PM 13 file his brief. Upon receipt of Mr. Bartolai's brief, Mr.
03:16PM 14 Hinkley will have 30 days to submit his brief, on behalf of the
03:16PM 15 Government.

03:16PM 16 Should, in the meantime, the Supreme Court grant the writ
03:16PM 17 in Alasad, we will have a conference call and discuss the
03:16PM 18 issue.

03:16PM 19 MR. HINKLEY: Thank you, Your Honor.

03:16PM 20 THE COURT: All right. Well, thank you all very much for
03:16PM 21 your attention and your testimony. I appreciate the time
03:16PM 22 involved.

03:16PM 23 (At this time the proceedings were adjourned.)
24
25

C E R T I F I C A T E

I, KRISTIN L. YEAGER, Official Court Reporter for the United States District Court for the Middle District of Pennsylvania, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct transcript of the within-mentioned proceedings had in the above-mentioned and numbered cause on the date or dates hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my supervision.

S/Kristin L. Yeager
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Official Court Reporter

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Official Court Reporter
United States District Court
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